Local 644, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Tousley-Iber Co.) *and* Edward W. Carroll. Case 33-CB-1829

22 August 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 11 October 1983 Administrative Law Judge Robert G. Romano issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a brief in partial support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and hereby orders that the Respondent, Local 644, United Brotherhood of Carpenters and Joiners of America, Pekin, Illinois, its officers, agents, and representatives, shall take the action set forth in the Order.

MEMBER HUNTER dissenting in part.

I am in agreement with my colleagues' finding that the Respondent Union violated Section 8(b)(1)(A) of the Act by unlawfully preferring internal union charges against member Carroll in retaliation for Carroll's filing of charges with this Board.

However, I cannot agree with my colleagues' adoption of the judge's dismissal of the 8(b)(1)(A) and (2) charges relating to Tousley-Iber Co.'s failure to hire Carroll. In my judgment the evidence clearly demonstrates that the Respondent Local 644 discouraged the Employer from hiring Carroll and that this conduct was motivated by a desire to retaliate against Carroll because of his dissident activities within the Local.

The collective-bargaining agreement to which Tousley-Iber and the Respondent were subject provides that an employer give notice to the union of its intention to hire and its employment requirements. For 48 hours following this notice, the union has an opportunity to refer qualified members for employment. The employer is under no obligation to hire those applicants referred by the union. The Respondent presently interprets this notice provision as precluding an employer from hiring "off the street," i.e., not pursuant to the Local's referral, prior to the expiration of the 48-hour referral opportunity. The Respondent contends that it was given the impression that Carroll had been hired without the Employer first having given the Local an opportunity to refer members for employment. The judge found this interpretation of the referral procedures reasonable, although there was evidence that the Employer's vice president, Unes, did not agree that the contract provision limited his hiring authority in such a way. The Employer's position, like the Union's, was based on the explicit language of the contract, which provides in section 1 of article VII that the Employer may hire from any source it desires without regard to referral or clearance by the Union. In any event, it is clear to me that the judge did not properly weigh the evidence of the Respondent's failure in the past to enforce its referral procedures with regard to various hirings of Carroll.

It is apparent that prior to June 1982 Carroll had been hired off the street at least three times. In each of these situations the contractual referral procedures, as the Respondent now interprets them, were not adhered to. The Local never protested these hirings although each of the employers was within the Local's jurisdiction. The first time the Respondent invoked its "exclusive opportunity" interpretation to block the direct hiring of Carroll was in the present situation, and it followed, significantly, the development of an intense personal animosity between Carroll and Vogel, the president/business representative of the Respondent.

The credited evidence demonstrates that for about 2 years prior to the filing of the charges in this case a profound bitterness had been evolving between Vogel and Carroll. In the summer of 1980 Carroll's criticism of Vogel's handling of a jurisdictional dispute with another union culminated in a vehement verbal confrontation between the two. Shortly thereafter, the Local filed various intraunion charges against Carroll in reaction to his use of

[1] We adopt the judge's finding that the Respondent's conversations with Tousley-Iber were not motivated by a desire to preclude Carroll from being hired. Rather, we find that they were designed to prevent any proclivity Tousley-Iber might be developing to hire workers off the street without affording the Respondent what it believed was contractually required, that is, advance notice and an opportunity to refer workers from its hiring hall. It is clear that Carroll could have been referred in this manner or that Tousley-Iber had the right to reject referrals and then to hire Carroll off the street. We also find, contrary to our dissenting colleague, that the Respondent's failure to protest hirings of Carroll off the street on three prior occasions does not prove a case of disparate treatment when the Respondent did protest to Tousley-Iber. Inasmuch as 50 percent of the Respondent's members were unemployed at the time of the protest, we agree that the Respondent had a legitimate reason for its action.

nonunion workers for a construction job at his home. The initial charges covered the immediate issue: use of nonunion labor in violation of the International constitution. But Vogel personally added charges that Carroll had engaged in willful slander of the Local's business representatives (one of whom was Vogel). Later, in the summer of 1981 Carroll, who had changed his local membership due to employment out of state, applied for transfer back to the Respondent Local. Vogel informed Carroll that he had put the transfer issue before the Local membership and that the members had voted to deny Carroll's readmission. The Respondent was later forced to accept Carroll's transfer because the membership vote proposed by Vogel was in violation of the International constitution. In February 1982, in a letter directed to an official of the International, Vogel described Carroll as "detrimental to the brotherhood and everything the union stands for."

All of the above occurrences clearly suggest Vogel's burgeoning hostility toward Carroll prior to the Respondent's conduct at issue here. In the spring of 1982, Carroll assisted in the intraunion campaign of a candidate seeking Vogel's position as Local business representative. During the campaign Carroll was unrestrained in his criticism of Vogel. Shortly before the June election another verbal confrontation occurred between Vogel and Carroll on the issue of voter eligibility. About the time that the Local elections were being held, Carroll approached Unes, the Employer's vice president, seeking employment in Tousley-Iber's upcoming construction project. To say the very least, Unes was impressed with Carroll's qualifications and conveyed to Carroll an interest in hiring him. Carroll informed the Local's assistant business representative that he had been hired by Tousley-Iber. When the assistant reported this to Vogel, a meeting was immediately arranged between the Local officials and Unes.

At the meeting Unes denied that he had told Carroll that he had been hired. Vogel declared that hiring Carroll directly would constitute bypassing the Respondent's notice-and-opportunity procedure in violation of the contract provisions. Vogel warned that Unes must utilize the procedure if he wanted to hire men for the project, that hiring off the street would lead to unnecessary distractions and complications in the future. Unes stated that under the provisions of the agreement he could hire as he pleased, off the street or otherwise, that he was not obligated to hire any referred Local members. However, he subsequently agreed with Vogel that it was in both their interests that the project run smoothly.

When Carroll next contacted Unes he was told that Local officials had raised objections to the Employer's hiring him. Carroll confronted Vogel with this information and Vogel declared that Carroll could be hired only through the referral procedure. It is apparent that Vogel then stated that Carroll had had recent success in getting hired outside the Respondent's jurisdiction, the clear implication being that this was the route Carroll should take in the future. When Carroll subsequently received an out-of-state employment offer, he again contacted Unes. Unes encouraged him to take the job.

On the circumstances of this case, I can reach no other conclusion but that Vogel discouraged the Employer from hiring Carroll in reprisal for his dissident activities, particularly his conduct in the Local election campaign. A union's retaliation against a member for engaging in protected intraunion political activity violates Section 8(b)(1)(A). See, e.g., *H. H. Robertson Co.*, 263 NLRB 1344, 1356 (1982); *Betchtel Power Corp.*, 248 NLRB 1257, 1260 (1980). It is not especially relevant whether Vogel expressly warned Unes not to hire Carroll. It was communicated effectively that the hiring of Carroll would be a troublesome issue, that there would be problems with the construction project. The effect of this threatening communication is evident in Unes agreement that things "run smoothly" and in the subsequent withdrawal of his expressed interest in hiring Carroll. When a union's conduct indicates, expressly or implicitly, an intent to arouse the employer's fear that the hire of an applicant will result in economic pressure against him, that conduct is sufficient to find a violation of Section 8(b)(2). *Bricklayers Local 18 (Ferguson Tile)*, 151 NLRB 160, 163 (1965).

The factual background for the immediate events of June 1982—the earlier history of animosity between Vogel and Carroll, that the Respondent had never protested before when Carroll was hired off the street by employees within its jurisdiction—tips the balance decidedly against the Respondent. Under these circumstances the Respondent's contention that it demanded that Unes utilize the agreement's referral procedures out of concern for its unemployed members is hardly convincing. Also to be taken into account is Vogel's conduct subsequent to the meeting with Unes. The implication in his remark concerning Carroll's success in finding work outside the Respondent's jurisdiction demonstrates his desire to get rid of a "troublemaker" and his animus toward Carroll's protected dissident activity. And there is the matter of Vogel's filing intraunion charges in consequence of Carroll's Board charges relating to the Local's interference with his being hired by Unes. The judge

found, and I agree, that that conduct was retaliatory and violative of Section 8(b)(1)(A). In weighing the sequence of events, I fail to see how the judge could find, in the midst of the overwhelming evidence of the Respondent's animosity toward Carroll both before and after the incident in question, that the pressure applied on the Employer by the Respondent was legitimately motivated.

My colleagues are in agreement with the judge. They find in particular that the Respondent's conduct was motivated by a desire to protect the job opportunities of its membership and that the effect on Carroll intended by the Respondent was merely to limit him to the same opportunities as other members. However, given the circumstances outlined above, I sincerely doubt that the Respondent would have offered Carroll's name for referral in any event, or that the Employer would have requested Carroll. My colleagues simply ignore the evidence of the Respondent's animosity and the effect of its demands on the Employer. The Respondent has not demonstrated that it would have acted in the same way absent Carroll's protected dissident activity. See *Wright Line*, 251 NLRB 1083 (1980). Viewed in the light of Vogel's hostility toward Carroll, the unemployment rate of the membership and the Respondent's arguable interpretation of the referral provisions were convenient handles in the Respondent's attempt to legitimize its retaliatory action against Carroll.

I conclude that the Respondent manipulated the referral provisions of the agreement and discouraged the Employer from hiring Carroll for purposes of reprisal against a dissident member. In my view, the evidence of unlawful motivation is more than adequate to support this conclusion. Accordingly, I would find the Respondent's conduct in violation of Section 8(b)(1)(A) and (2) and I respectfully dissent from my colleagues' failure to so find.

DECISION

STATEMENT OF THE CASE

ROBERT G. ROMANO, Administrative Law Judge. This case was heard before me at Peoria, Illinois, on April 18 and 19, 1983. The charge in Case 33-CB-1829 was filed on July 12, 1982,[1] by Edward W. Carroll, an individual charging party (Carroll), against Local 644, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent or Local 644). Complaint issued on February 10, 1983 (amended April 18), alleging violations of Section 8(b)(1)(A) and (2) of the Act. With extension of time granted, Respondent filed timely answer on February 28 1983 (amended April 18), denying the commission of any unfair labor practices.

The complaint alleges that Respondent, on June 14, attempted to cause and caused Tousley-Iber Co. to refuse to employ Carroll for reasons other than Carroll's failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in Respondent, in violation of Section 8(b)(1)(A) and (2) of the Act. The complaint further alleges that it was because Carroll had engaged in protected activity not approved of by Respondent; that in mid-June Respondent told member-job applicants that it had caused Employer Tousley-Iber Co. not to hire Carroll; that it would not permit Carroll to work in Respondent's area; and that Respondent had then urged Carroll to leave Respondent's area to find work, all in violation of Section 8(b)(1)(A). Finally, the complaint alleges that about July 15 Respondent brought internal union charges against Carroll because Carroll had filed the instant charges in Case 33-CB-1829, in further violation of Section 8(b)(1)(A).

The parties are in agreement that Respondent does not operate an exclusive hiring hall, but are otherwise in dispute as to precise import of the current contract's hiring hall referral provisions; and, as well, as to the scope of arrangements, practices, and understanding that are contended to have been operative thereunder. Finally the case presents the above issues for resolution in context of contended internal union antagonisms existing between Carroll and Local business representatives, and in background of a nonexclusive referral system operating at a time when substantial numbers of individuals using the hall were long time unemployed.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent Local 644 about May 23, 1983, I make the following

FINDINGS OF FACT

I. JURISDICTION

Jurisdiction is not in issue. The complaint (as amended at the hearing) alleges, Respondent by answer (as similarly amended) admits, and/or the parties have stipulated that Tousley-Iber Co. (Employer or Iber), a Nevada corporation, is engaged in the business of general contracting in commercial, industrial, and institutional buildings and multifamily dwellings; and that during the past 12 months, representative of material period herein, in the course and conduct of its business operations, Iber purchased and caused goods and materials valued in excess of $50,000 to be transferred from States other than the State of Illinois, and to be delivered directly to Iber's jobsites located in and near Peoria, Illinois. I find that Iber is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 644 is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates herein are in 1982 unless otherwise shown. The General Counsel's unopposed motion to correct the record is granted.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. The collective-bargaining agreements; and parties thereto

The material collective-bargaining agreement was effective from May 1, 1980, through April 30, 1983. The agreement was made and entered into by and among six multiemployer associations, insofar as pertinent, inclusive of the Greater Peoria Contractors and Suppliers Association, Inc. (the Association) in behalf of themselves and their Employer-members (Iber being one such member of the Association), and the Central Illinois District Council of Carpenters, AFL-CIO (District Council) for itself and in behalf of its seven affiliated (and contiguous) Local unions, insofar as pertinent, being inclusive of Respondent Local 644 (Pekin) and Local 183 (Peoria).

The city of Pekin is located 10 miles south of Peoria. Local 644's northern border is contiguous with Local 183's southern border. Local 644 and Local 183 have their main offices located in Pekin and Peoria, respectively. Iber is a party to the Association's and the District Council's contract, as are Local 644 and Local 183.

2. The officials involved

Neal Tousley is one of the principal owners of Iber; and Richard Unes is Iber's vice president in charge of operations and also apparently a part owner. Carl Williams was Iber's assigned general superintendent on Iber's multiunit highrise and lowrise buildings at its Courtside Place project in Pekin in Local 644's jurisdiction.

Gene Davis is secretary-treasurer and general agent of District Council. Darrell Vogel is the president of Local 644, and he has been business representative of Respondent Local 644 since 1975. Bert Van Horn, appointed by Vogel (though with final approval of Respondent's executive board) for a successive 3-year term, is an assistant business representative of Local 644. Van Horn, a member of Local 644 for 31 years, was also a local union trustee for 23 years. Additionally, both Vogel and Van Horn served as trustees on the Union's pension board which (trust fund) affairs were directed by an equal number of union and employer trustees. Don Shaw, supported by Carroll, ran unsuccessfully in opposition to Vogel for business representative in a June 1982 election.

3. The contract's pertinent provisions

a. *In general*

In the contract's preamble, employer and union have pledged themselves, "to the highest degrees of harmony and good faith in the performance of this agreement." The contract covers all carpentry work inclusive of "Journeyman, Apprentices, Pile Drivers, Millwrights and Lathers." (Art. I, sec. 3.) Union security is provided for in the form of agreements (art. III) that all employees are "obligated to become members of the Union after the 7th, but not later than the 8th day of employment"; to further, "maintain their membership in the Union as a condition of continued employment"; and there is also provision in the contract for check off of union dues.

In article VI, general working conditions, there is a provision that the Employer recognizes "the sole right of the Local Union, which has jurisdiction where the jobsite is, to appoint a Steward"; and who (with apparent limited exception to described minor jobs) also "shall be a member of the Local Union who has jurisdiction where the work is to be performed." Depending on the number of employees who are working as carpenters or millwrights (as distinguished from certain others, e.g., from pile drivers), there is further provision for designation of a foreman (over a crew of 2-6 individuals), a Senior foreman (8-10), and general foreman (22-33). There are provisions applying as to instructions to be given by general foreman to senior foremen, rather than crew when 33 are employed. Employment of carpenters in number beyond 33 repeats the above process. The above foremen are by contract nonsupervisory, working foremen.

b. *The written referral provisions*

The contractual referral provisions, as to the meaning of which the parties are in conflict, are set forth below, in their entirety:

ARTICLE VII

Hiring and Notice

Section 1. Responsibility for Hiring. The Employer shall have the sole and exclusive responsibility for hiring and may hire from any source it desires without paying heed to membership in the UNION or referral or clearance therefrom.

Section 2. No Obligation to Refer. The UNION shall have no obligation to refer prospective employees to the EMPLOYER but may do so if it desires.

Section 3. Legal Authorization. The EMPLOYER is exclusively engaged in the building and construction industry and the parties have elected to come under the provisions of Section 8(f), Part 3 of the National Labor Relations Act, as amended, which permits the parties to make an Agreement requiring the EMPLOYER to:

(a) Notify the UNION of opportunities for employment provided, however that the EMPLOYER reserves the right of recall of former employees who are members of the Central Illinois District Council of Carpenters and have been employed by the EMPLOYER within the previous twelve (12) months.

(b) Give the UNION an opportunity to refer qualified applicants for employment.

Section 4. Procedure. In the application and administration of Section 3 of this Article, the following shall govern:

(a) The EMPLOYER shall advise the UNION of all available openings and job requirements at least forty-eight (48) hours prior to the EMPLOYER'S fulfilling such job requirements.

(b) Pre-Job Conference. No EMPLOYER covered by this Agreement shall commence a job until the pre-job conference has been held. Such pre-job conference shall be held not less than seventy-two (72) hours before a job commences. If there is a need for additional men after the job has started, then a conference shall be held before the additional hiring commences, if the UNION elects. At the pre-job conference, the EMPLOYER shall advise the UNION of its requirements as to the workmen required in the respective classifications, the probable starting date, duration of the job and the working schedules.

(c) The UNION shall be given an opportunity to refer qualified applicants for employment.

(d) Men so referred shall not be given preference of priority by the EMPLOYER over non-referred men and the EMPLOYER shall have the sole and exclusive right of accepting or rejecting the men so referred.

(e) Nothing herein shall prohibit the EMPLOYER from hiring or recruiting workmen from any source it desires.

Section 5. Severability and Invalidity. It is the intention of the parties hereto to comply with the provision of the National Labor Relations Act, as amended, and in the event this Article is declared to be unlawful, then it shall become inoperative and void and the parties shall immediately meet to negotiate a legal mutually acceptable substitute. The other legal provisions of the Agreement shall not be affected thereby.

c. *The attendant referral arrangements, practices and understandings*

All the business agents of the several affiliated locals are under the direction of the District Council's general agent Davis. Davis has acknowledged that it was not contractually necessary that an employer obtain its carpenters through the Union's hall. However, Davis also testified that a contractor's (initial) hiring off the street was not part of the procedure. Apart from the practice of a contractor based in one local's jurisdiction bringing certain current or regular employees with the contractor to a jobsite in another local's jurisdiction, discussed infra, Davis confirmed that a contractor had the right under the contract to recall (directly) individuals who had worked for that employer within the past 12 months; and that the contractor also had the right under the contract to accept or to reject a man who was referred to the contractor by the Local union hall. Nonetheless Davis has testified that under the contract's provisions, and with an asserted further reliance on contended supportive holding of a prior arbitration award, that he obtained some 6 years earlier, that a contractor had to give the (Local) union the first opportunity to refer qualified men when needed; be additionally given 48-hour notice (opportunity to refer), if the union demanded it; and that it was after the contract procedures were exhausted that the contractor could then hire from any source on his own.

The arbitration award itself was not offered in evidence. Nonetheless Davis testified that the underlying circumstances were that he had promised an individual stewardship on a certain small (two-man) job, but when the individual reported to the job the individual learned that the employer had already hired two men off the street. According to Davis, when the individual reported that circumstance to Davis, Davis contacted the employer and was told by the employer that it could hire whomever it pleased. Davis replied, "Fine, but we will arbitrate it," and the Union did. Davis asserts the Union won the arbitration and the individual was awarded the 1 day's lost pay. Although the General Counsel has sought to argue that the award was made because the Union had contractual right to designate the steward, Davis has testified essentially that was *not* the issue arbitrated, and that there never was a question raised that the Union could designate who was to be the steward. In any event, Davis has testified credibly that he had taken repeated occasions in meetings held since, to review (at least his view of) the above-hiring hall procedures with all his business agents; that he had issued standing orders to all the business agents that they were to have the prejob conference with an employer on every job; and that they were going to enforce the hiring hall procedures as Davis viewed them.

As noted, the locals affiliated in the District Council share varying contiguous jurisdictions. Although it is rather common for a contractor to work primarily within the jurisdiction of one given local where it is based, from time to time such a contractor will also have occasion to have construction work in another local's jurisdiction. Vogel has denied that when such a contractor came into another local's jurisdiction that there was an understanding that there would be an automatic 50-50 split in the employment opportunities on a job between the two affected locals. Vogel rather testified that when he called a prejob conference (in that circumstance) with a contractor he asked that the contractor refer to him for the men needed. Van Horn corroborated that if a contractor was from out of town the Union asked that the foreman, steward, and all other men be referred from Local 644. However, Van Horn added that if a contractor has an international agreement he is allowed to bring in his superintendent and one foreman. Van Horn also testified that Iber had the right to bring its own men to a job who could act as foremen, which it held out it was going to do, and did (at least initially).

In that respect, Vogel has consistently acknowledged that he would prefer that Local 644 supply all men required by a contractor for a jobsite in his Local's jurisdiction. However, Vogel has also as candidly acknowledged that a 50-percent split (in the manning) is what may eventually work out as the best that Local 644 can get, as his employers were essentially all contractors based in Peoria. Thus, the practice Vogel described he stood on, was, that after the contractor came to a jobsite within Local 644's jurisdiction with the employees the contractor brought, the contractor had to use Local 644's hall, as any additional men should come from the Local hall where the contractor was working; and that

the contractor had to give him 48-hour notice (opportunity) to fill the additionally required jobs. Van Horn corroborated Vogel that they had 48 hours from a contractor's request for men to refer qualified men for employment; and, if they could not, the contractor could then hire whomever it pleased. Neither Vogel nor Van Horn have contested the right of the contractor to hire directly individuals employed by the contractor in the prior 12 months; or that a contractor could reject an individual when referred by Local 644. Indeed Van Horn has testified emphatically that if a contractor asked him for a man by name, that man would be sent.

Local 644 is a diversified local, with a little over 500 members. Although there is but one journeyman card, the skills of its members are varied, covering, inter alia, carpentry work (house, trim, mill and cabinetry, form and drywall); millwright work (machinery or turbine); and other carpentry specialties such as roofing, shingles, and carpet trim. Local 644 does not utilize an out-of-work list in making its referrals, and had not in the 5 years Van Horn has been a business agent. Van Horn, who has been a houseman for 31 years, handles essentially all housework and residential work requests, while Vogel generally handles the millwright work. Van Horn testified that he knows the (carpentry) people and their individual skills, and Vogel does similarly the millwrights. On first arrival, a new man will explain his credentials; and the business agent will in any event find out the individual's skills the first time the man is referred.

Van Horn testified credibly that he comes to work daily at 6:15 a.m. in order to handle contractor calls and to be able to get the men out to the jobsite by 8 a.m. A lot of individuals will come to the hall every day and wait for a referral. When a contractor calls, the contractor many times specifies what particular type skill he wants, e.g., a trim, or shingleman; and Van Horn will send the contractor what the contractor wanted, as they have to make money, or the Union is not going to be in business. Van Horn acknowledged that sometimes he will call a man at home and refer him to a job.

During the times material herein, Van Horn testified that 50-percent of its membership was unemployed. Carroll has conceded that was possible; and Shaw, called as a witness by the General Counsel, on cross-examination confirmed essentially that it was a *good* 50 percent that was unemployed, and had been for the past 2 years. There is no question Vogel and Van Horn otherwise have made selective referrals on that account. Vogel thus testified that the ones who had run out of unemployment were the ones the Local tried to get out first. Van Horn confirmed that he knew who the ones who were out of unemployment were, as out-of-work individuals regularly come in to have their unemployment cards signed. The individuals would tell the business agents when they had run out of unemployment compensation. I additionally credit the union witnesses who have testified that wives would regularly call the business agents at the hall, home, even hospital, about the effects of the above of losing everything. I further find that Local 644, in the last few years, had resultingly engrafted in the operation of its hiring hall system a practice whereby it generally would attempt to first refer qualified individuals who had run out of unemployment compensation. Vogel also acknowledged that he had a good idea of who is working; who has had a great deal of work in the recent past; and, as well, who has been on the bench (not working) for a long time.

The Union does keep a running list of all the men it refers, showing the date, employer, job, and individuals referred. How long an individual remained on a job, Vogel could not tell; except that the Union's steward does make a weekly report showing the names of the individuals working on the given job, the foreman and the steward, and the Local membership identification of all those thus shown employed on the project that week. There is no allegation of an improper operation of its hiring hall, other than is alleged in regard to Carroll as an individual.

B. *The Development of Conflict Between Carroll and Local 644*

1. Carroll's union membership and employment history

After completing a 4-year apprenticeship, Carroll worked for 23 years as a journeyman carpenter. Carroll was initially a member of Peoria Local 183 for 7–8 years before becoming a member of Pekin Local 644 in 1963 or 1964. Vogel, who first became acquainted with Carroll at work some in 1969, was first elected business representative of Local 644 in 1975. Vogel has been periodically reelected, last in June 1982. Carroll has never held an elective union office, though he had earlier served on Local 644's examining board, on being appointed to it by Chuck Lewis, who was president of Local 644 at the time. Vogel has been president for 10 years.

Carroll has performed the various types of carpentry and millwright work. Carroll also asserted that he has worked in supervision (apparently hourly) for the last 15–18 years, though the former would appear the more likely as Carroll related that he had worked for Power Systems under Lewis in 1966–1967, as a millwright, installing a turbine in a powerhouse at an E. D. Edwards plant. In any event there is no issue raised as to Carroll's technical qualification as a journeyman carpenter, nor as to his ability to perform as a working foreman. Nonetheless, Carroll asserts that he has had problems with Local 644 ever since its former business representative Roger Gooler got out; and he has related the start of his difficulties with Local 644 as being over for whom he had voted.

Carroll's testimony as to the prior existing practice on securing employment was that there were two ways an individual could get work. Carroll asserted, you can go to the hall and sit there day after day, and if they like you, they will send you to work; or, you can go look for your own work. Thus Carroll testified, you can go to a contractor and present yourself to let the contractor know what you can do; and, if he is interested, he can hire you. While Respondent does not appear to contend there were internal restrictions placed on a union member as far as his looking for work on his own, it does join issue, as noted above, on the effect of the latter

in relation to the hiring hall's operation and its governing procedures and practices, specifically in regard to the Union being nonetheless afforded an opportunity to refer qualified men, before an employer actually hired a man off the street. In contrast, Carroll has testified that he had several times previously obtained employment on his own, directly from a contractor.

Vogel's recollection was that Carroll had worked for Baldwin Associates (Baldwin) for a period of about 4 years, which would have essentially covered Vogel's initial term as business representative. Vogel testified that he had assumed that his predecessor in office had referred Carroll to the Baldwin jobsite in Havana, Illinois, which was in Local 644's jurisdiction, because he knew Carroll had worked there as a general foreman. Vogel however acknowledged that he did not know how Carroll had obtained that job. The record is clear Vogel had not referred Carroll to it. Carroll has testified, thus without direct contradiction, that he got the job as general carpenter foreman at the Baldwin jobsite in Havana through Furin and Cowen, a contractor. Carroll's recollection was that he had worked there in 1976–1979. Vogel testified I find, credibly, that the Baldwin job started before he became business representative.

It is uncontested that Carroll obtained his next job, with Atlantic Plant Maintenance (Atlantic) for work at its Powerton (nuclear) jobsite, through a referral obtained from Vogel. Vogel additionally testified credibly that Carroll worked at Powerton as a foreman, and then as a general foreman. Carroll confirmed that he was referred to Atlantic and worked there for 2–3 months before sustaining an injury on the job which occasioned his being off work for a period of 9–10 months. In passing, I do not find Carroll's assertions as to having had difficulties with Local 644 since Gooler left, or in Vogel's initial term, as supported by the evidence, or convincing. I conclude it to be an unsupported embellishment.

Carroll's next job was with Heinz Construction Co. (Heinz) on a maintenance contract that Heinz had obtained at a Caterpillar plant, or foundry, located at Mapleton, Illinois, also within Local 644's jurisdiction. Carroll has testified that he obtained that job directly with Frank Heinz, and that he worked there from December 1979 to December 1980 as a general foreman for the carpenters and millwrights. Vogel has acknowledged that he had not referred Carroll to that job, but has testified (seemingly describing his own knowledge that a personal friendship existed between Carroll and Heinz) that Carroll knew the owner, presumably Frank Heinz. Vogel otherwise testified that Hennis Corporation (Hennis) was also working the same jobsite. Hennis was installing a bucket conveyor system. Hennis also employed millwrights and ironworkers. There was a confrontation between Carroll and Vogel on this jobsite, not as to Carroll's obtaining work there, but as to Vogel's performance as business representative in regard to certain millwright-ironworkers work jurisdictional disputes.

2. The millwrights-ironworkers work disputes; the evidenced beginning of Carroll-Vogel confrontations

According to Vogel there were numerous work jurisdictional disputes between millwrights and ironworkers at this jobsite; and as Vogel described it in recollection, it seemed like he was over there constantly. Some of the disputes involved Heinz, and Vogel had occasion to talk to Carroll every time Vogel was there. (In that regard the District Council's "By-Laws and Working Rules," in "Working Rules," section 11, provides: "No member shall surrender any part of any work included in our jurisdiction of work to any craft until ordered to do so by a representative of the Local Union or District Council." However, section 9 thereof additionally provides: "Any member willfully obstructing a Business Representative or Steward in the lawful discharge of his duties shall be in violation.")

Vogel has acknowledged that on one such occasion a shouting match over a work dispute had developed between Carroll and him in the parking lot by the Heinz job trailer. Carroll's version is that the incident had occurred about July-August 1980. The millwrights had just lost a dispute with the ironworkers after a discussion of the dispute in the superintendent's office. Carroll relates that 3 months earlier he had been told by an ironworkers' business agent that the disputed work (chute work from machine to machine) belonged to the millwrights. Carroll acknowledged that he was a little bit hostile over the loss because he felt they had been losing as much work as anybody could possibly lose. According to Carroll he told Vogel at this time that it was horseshit to be losing all this work after the ironworkers had already told them it was their work. Carroll's account is that Vogel told Carroll he was bull headed, that Vogel also called Carroll a union radical, and that Vogel asked Carroll why Carroll could not realize that Vogel had a job to do.

Vogel's version is essentially similar, except he felt that Carroll always thought disputed work was millwright work; and Vogel asserts that was not always the case. On this occasion Vogel told Carroll that who the work belonged to was a matter of opinion; and that Carroll told Vogel that the work should not be taken over by the ironworkers. Vogel replied that he had rules he had to follow on that. In that regard, Vogel has testified without contradiction that he had filed on all the work disputes he could, but that he had always gone through the general office as he was required to do under the contract without work stoppage. Vogel did not think Carroll had cursed at him, but Vogel has acknowledged that he on this occasion had called Carroll bullheaded and a union radical.

On cross-examination Carroll initially asserted that he was fairly familiar with certain written agreements between the millwrights and ironworkers concerning jurisdictional matters, that he thought there was one on the chute or hopper, from machine to machine, but that he was not sure it was in effect.

Davis has relatedly testified that he was involved over the phone with the Mapleton jurisdictional dispute over

the metal chutes, though he did not know how it was eventually settled. However, Davis did otherwise explicate that there had been an earlier letter of understanding that divided the work, but did so in such a way that you could interpret it 10 different ways, and it solved nothing. Davis testified, without contradiction, that the letter of understanding between the carpenters, millwrights, and ironworkers had been abrogated 5 years earlier. Davis also testified that at the time of abrogation his international advised the carpenters to take their best hold, and he presumed the ironworkers international had advised ironworkers to do the same.

3. The initial union charges preferred against Carroll for use of a nonunion contractor on his personal residence; and related considerations

Part of Van Horn's duties is to regularly check on jobsites, including residential jobsites. District Council working rules, section 16 requires a "member performing work for himself" to notify the local business representative; and section 17 places certain time limitations on building a house for himself without permission. The District Council's Objects section 2, in pertinent part provides ". . . to assist our members in procuring employment." Van Horn testified that on October 17, 1980, he visited a residential jobsite (Carroll's home) at which a room addition was being constructed. When Van Horn inquired of the carpenters doing the work if they carried union cards, Van Horn was directed to talk to the lady inside, who at that time emerged from the house. Van Horn introduced himself to Mrs. Carroll, and, on inquiring if the men doing the work were union, Van Horn was told by Mrs. Carroll that she had initially called a Local 644 contractor, but he was too busy. Van Horn then told Mrs. Carroll that his problem was with Ed Carroll, not you. On his return to the hall, Van Horn reported the incident to Vogel.

Carroll's version is that it was a screened front porch that was being put on his house. He explained that he had recently sold a piece of property and had to have a tax writeoff. Carroll confirmed that his wife had initially called several union contractors but could not get one, and that the contractor she had contracted with had said that he would go either way she wished. Carroll asserted that he lived by a blacktop, not in the woods, and he was not trying to hide it. However, Carroll testified he had decided at the time that he was having enough problems with the Union, and that if he got a nonunion contractor out there maybe he could get some results from the International, and have them come down and see what was going on.

Van Horn testified that when he reported the incident to Vogel, Van Horn suggested to Vogel that before they writeup the man, that they give Carroll the opportunity to withdraw the nonunion people, so they do not have a problem. Vogel then placed a call to Carroll at Heinz. Van Horn testified that Vogel in his presence asked Carroll if he would remove the nonunion people. When Carroll said he would not, Vogel told Carroll, "We will have to write you up," and that Carroll told Vogel to do what he had to do.

Carroll has confirmed receiving the prior call from Vogel at Heinz' office, including its warning nature, viz., that Vogel was going to prefer charges *if* Carroll did not remove the nonunion people. Carroll has otherwise testified that he told Vogel at that time, "if you get the ironworkers away from our work at Mapleton, I will get the people away from my house."

Van Horn, on cross-examination, acknowledged that he could not hear Carroll, and did not know if Carroll had also made mention of Vogel's getting the ironworkers at Mapleton off millwright-claimed work, though Van Horn has testified definitively that he heard Vogel say, "Are you telling me I have to do what I have to do," and that Carroll said, "Yes." In regard to the ironworker removal remark in the Vogel-Carroll conversation, Vogel was not questioned by the parties when called initially by the General Counsel under section 611(c), and he was not subsequently recalled by Respondent to offer testimony in denial. I find that Carroll made that statement to Vogel, though I entertain some reservation he did so at that time.

On October 21, 1980, Van Horn initially preferred internal union charges against Carroll with the District Council, under the United Brotherhood's Constitution and bylaws, A section 55 (13), "Violating the Obligation." The charge made specified, "Failure to employ only union labor, when the same can be had"; and it described essentially the facts of Van Horn's visit to Carroll's residence; his report to Vogel; and his own awareness of Vogel's warning conversation with Carroll and Carroll's refusal to remove the "unfair" contractor.

On October 31, 1980, Vogel also preferred charges against Carroll, charging Carroll (generally) with violations of A section 55(1) and (5) in addition to (13). Section 55(1) would effectively charge Carroll with "causing dissension among the members of the United Brotherhood"; and section 55(5) would charge Carroll with "willful slander or libel of an officer or any member of the United Brotherhood."

Although Van Horn was unable to testify definitively as to Carroll's full conversation with Vogel, Van Horn did testify that Carroll had later appeared before the District Council's executive board, the union body which would determine in the first instance whether a constitutional course (trial) on the charges would be followed. Van Horn testified without contradiction that Carroll said nothing to them about the Mapleton jurisdictional disputes, but rather that Carroll had told that body at the time that he had not removed the "unfair contractor" because he wanted the Union to organize them. The executive board directed the charges take the constitutional course; and in due course the trial was held. Carroll was found guilty on all counts.

Carroll acknowledged that he did testify before the District Council. Carroll confirmed that he did not tell the District Council that his reason for using the "unfair contractor" was to bring attention to the ironworkers' dispute. Nor did Carroll deny Van Horn's account of what he did say before the executive board. Finally, Carroll conceded at hearing that in using the nonunion contractor he had violated his contract (union obligation).

Carroll also acknowledged that he was aware that he could have appealed to the International, and that he did not.

On January 5, 1981, the designated trial committee reported its findings of guilty to the delegate body. On January 6, 1981, Davis confirmed to Carroll, in writing, that Carroll had been found guilty, and had been fined $100 on each violation (a total of $400); and additionally that the District Council's delegate body had voted (on each charge) "to debar you from participating in any local union activities, rights or privileges of a member, except for paying dues for a period of five (5) years." As noted, Carroll did not appeal, and he thereafter paid the $400 in fines. Carroll testified that he understood therefrom that he was not allowed to attend union meetings or to vote on internal union issues. However, when questioned concerning his involvement in the union elective process itself, Carroll asserted, "I think you are [there] going into my civil rights; and, I have a right to speak about anything I want to."

As noted, Carroll's job at Heinz ended about December 1980. Local 644 was about to enter, indeed if it had not already entered, a period of generally high area unemployment for Local 644 members. Apparently in early 1981 Carroll learned of a chance to go to work for Alberici Construction (Alberici) in St. Louis, Missouri. (From Carroll's testimony that he had worked 9-10 months in 1981 on jobs he found by himself, it would appear it may have been earlier than May, that he obtained employment with Alberici.) In any event on May 6, 1981, Carroll transferred his union membership from Local 644 to Local Union 602, located in St. Louis, Missouri. Carroll worked for Alberici in St. Louis at two jobsites (McDonnell-Douglas and Chrysler) for approximately 3 months until about the end of July. Carroll was supposed to work further for Alberici on a General Motors jobsite starting in mid-August 1981, but in the interim Carroll obtained still other employment with Belding Corporation (Belding) as an assistant millwright superintendent at Belding's Hormel Meat Packing Plant jobsite, starting about August 1-3, 1981, with work to extend on that job through the end of the year.

4. Carroll's difficulty in transferring his membership back from St. Louis Local 602 to Pekin Local 644; the question of claimed union acceptance of Belding pension fund contributions as a favor to Carroll

Carroll has 16 or 17 years vested in Local 644's pension, which Carroll has described as being one of the best pension plans in the country. Insofar as the pension plan was concerned, Carroll related he had not worked long enough in St. Louis, but his view otherwise was that the hours he was to work in Minnesota would be wasted. In any event, Carroll was able to make an arrangement with Belding that they would take care of his pension and health and welfare contributions. Carroll's understanding apparently was that to qualify for Local 644's pension he had only to be a member of Local 644, as well as have the certain number of years, and consecutive hours. Carroll testified that his pension payment contributions were refused until he eventually got his card back in Local 644. It would appear from Carroll's lack of knowledge whether Belding was under contract with Local 644, that he did not consider that as a factor in the Union's refusal of contributions made in his behalf.

Carroll testified that he had St. Louis Local 602 transfer his membership card back to Local 644; and it was about mid-August (confirmed by Vogel) that Carroll called Vogel on it. According to Carroll, Vogel said that they would have to wait for the next union meeting to come up, and would vote on it to see what was going to take place. Vogel informed Carroll when Carroll should call back to find the result.

Vogel confirmed that he had presented question of Carroll's request to transfer his card back into Local 644 to the local union membership at a local union meeting (probably in September); and he testified that the membership voted not to accept Carroll. When Carroll did call back as directed, Carroll was informed (I find) by Vogel that the Local had voted not to accept his card. Carroll relates Vogel told him that his book was supposed to have been mailed back to St. Louis, though he later accused Local 644 of throwing it in the garbage can.

The record reveals that by letter to Carroll dated December 5, 1981, with copies to Davis and to International Vice President Sigurd Lucassen, International General Representative John Pruitt informed Carroll relative to Carroll's apparent earlier complaint of October 29, 1981, that Local 644 had failed to accept his clearance card, and to return his dues book, because Pruitt had been unable to locate Carroll's dues book, but that Pruitt had been informed it had been mailed on September 11, 1981, to Carroll's Austin, Minnesota address. Pruitt's letter to Carroll then advised:

> If by chance you have not received your dues book please contact LU 602 and obtain a duplicate. Also request a new clearance card and present both your dues book and clearance card to Gene Davis, Secretary of the Central Illinois District Council of Carpenters. If your dues book and clearance card are in good order your transfer will be made without further delay.

As noted, Carroll was employed by Belding in Austin, Minnesota, from mid-August through December 1981. Davis testified, with documentary support, that on December 29, 1981, Carroll had personally brought his card by the District Council office, and that on that day Davis approved Carroll's clearance into Local 644. In regard to Carroll's visit to his office, Davis also testified that he had a material discussion with Carroll at that time about work opportunities.

Thus, Davis recalled that he told Carroll that it was a bad time for Carroll to be clearing back in as there was no work in Peoria, or in Pekin and that the times were worse than Davis had ever seen them. Davis told Carroll that he did not know what they were going to do for the rest of the winter, and that the summer did not look any better. There is conflict between Davis and Carroll as to what Carroll said in reply.

Davis' version is that Carroll told Davis that he realized that, but he was only there because his living ex-

penses would be cheaper. According to Davis, Carroll's exact words were, "I have got resumes out throughout the country, and I expect to be called by some of those (contractors) in the near future"; and that Carroll had said, "so I am just here to live a little cheaper while I am getting answers from my resumes." Davis also recalled that they had discussed the work around the country, that Carroll had talked about the work in St. Louis (though Davis did not recall Carroll's mention of Minnesota), and that Carroll had said he had run out of work there and he had come back to live in his home *until he got another job*, or reply from the resumes.

On rebuttal Carroll's version was that they had talked about the work both in the St. Louis and Minnesota areas, and that Carroll had said there was little work coming up in St. Louis, but that Minnesota was in bad shape also. However, Carroll testified that to his knowledge resumes were not discussed. Carroll otherwise denied he had told Davis that he had resumes out all over the country, and that in fact he did not have resumes out all over the country at that time. Carroll also denied he said he was here only to live a little cheaper.

It will be recalled that Carroll acknowledged that it was possible that 50 percent of Local 644 was out of work. Whether Carroll had mentioned resumes as Davis has specifically recalled, or in some other manner, later or not at all, and Davis has confused a recollection of similar conversation with someone else, I am wholly convinced that their discussion otherwise centered on the material circumstances of a severe lack of work opportunities in the local area (and elsewhere) at the very time Carroll was returning to Local 644, and that Carroll was fully aware of that circumstance.

Van Horn testified that he had been a trustee of the pension board since 1964. According to Van Horn, Belding had not signed a contract with the Union, which Van Horn asserted was a requirement for the Union to accept contributions from Belding on behalf of Carroll. Nonetheless, Van Horn testified that Vogel felt that anybody that worked should be credited with his hours; and Van Horn further testified that Vogel had subsequently called a meeting of all the trustees, who had then voted unanimously to accept the contributions from Belding on behalf of Carroll, as a favor to Carroll though there was a question of legality in doing so. Respondent has contended that the same is evidence that Local 644, and Vogel in particular, did not harbor ill will towards Carroll at this time. There is some ambiguity in the evidence.

No documentary evidence was offered as to when the trustee meeting was precisely held. Van Horn's original recollection was that it was about the end of 1981 when the trustee meeting occurred. He later clarified the meeting had to have been after Carroll's card was cleared (December 29, 1981), but was uncertain as to it being after Carroll's card was actually deposited with Local 644 (January 13, 1982). Van Horn testified with conviction, however, that the meeting was held at a time when Belding had not signed a contract. Van Horn otherwise testified that he thought the meeting could have been held in January, conceivably February. The General Counsel offered no evidence on the matter, and no union witness confirmed the date.

5. Vogel's continuing internal union inquiry on Carroll's membership in Local 644, in early February; and other matters evidenced as being of contemporaneous concern to Vogel

Apparently on February 2 Carroll, after International contact, had presented to Vogel a certain hospital bill with a claim for payment by Local 644. In any event, it is clear that on February 3, 1982, Vogel wrote Lucassen in regard to Lucassen's correspondence with Carroll to explain the Local's view. After first reviewing the prior circumstance that charges had been earlier brought against Carroll for hiring a nonunion carpenter to work on his house, and of other charges (as described in the letter) of Carroll's willful slander of Vogel and Van Horn, and that findings of guilty were made on all the charges. Vogel's letter then raised a question on the matter of Carroll's membership in Local 644, as follows:

> I have been President of Local #644 for ten years and my procedure and that of previous Presidents has been as follows. If the member's book is in order a motion is made to accept the book and to seat the Brother. This is how Mr. Carroll's case was handled. When the verbal vote was taken the nays won. I then called for a standing vote and the motion was again defeated. Does the Local have the right to vote against a clearance card, when the Brother is detrimental to the Brotherhood and completely against everything the Union stands for?

Vogel's letter went on to address Local 644 obligation on the hospital claim, and equally significantly to address the matter of Carroll's involvement in union affairs, and particularly in regard to Vogel, as follows:

> At his trial, Mr. Carroll's sentence included that he would not be allowed to participate in any union activities for a period of 5 years. He was in my office yesterday informing me that you said that I or the Local was responsible for his hospital bills because we had not accepted his clearance card. I disagreed and will not allow Union funds to be used for this.
>
> He is also getting involved in our general elections this May and June including my office, which is in direct violation of his sentence of January, 1981. If I can prove this, he will be charged again. If this happens, I will attempt, thru [sic] the Central States District Council, to take his book permanently.

These are the facts in this case as I see them.

By letter dated February 22, 1982, Lucassen replied to Vogel denying that he had made the statements Vogel indicated had been attributed to him by Carroll about Local 644's obligation to make payment of Carroll's hospital bills; but offering assumption that Carroll may have alluded to the health and welfare programing doing so, the letter then noting: "We both know eligibility for

such programs are set by the Trustees and are administered uniformly to all participants whether they be members of the Local Union or not."

Vogel was further informed by Lucassen that with regard to Carroll's prior charges and penalties it was Carroll's responsibility to see that he did not get in further problems, but that a copy of Vogel's letter and Lucassen's reply would be sent to Pruitt with direction that Pruitt contact Carroll to see that Carroll in fact complied with the rules of his membership.

In regard to the question Vogel had raised on Carroll's transfer of membership back to Local 644, Lucassen informed Vogel that under section 46G of the constitution, no local membership action is required, the only action required is that the local be advised of any newly cleared-in members.[2] At the hearing Vogel testified that he had written to inquire of Lucassen on that as they had been doing it that way for 25 years, but all of a sudden they were not doing it right. Vogel additionally testified that when he was directed to change it, he did. There was no attack made on Vogel's claim of what had been the longstanding voting practice on seating a member, albeit, in material time, an erroneous practice. I credit Vogel in that regard and I accordingly will not rely on the mere circumstance that an issue of an acceptance of Carroll's transfer was put to the membership in contravention of the constitution as evidencing Vogel's personal animosity towards Carroll, particularly with his recent action in effecting trustee acceptance of Belding pension contributions on Carroll's behalf.

Finally Lucassen's reply to Vogel otherwise also materially informed Vogel:

> I would also like to bring to your attention, there are certain rights that an individual member has under federal law, and I would hope that you will review these rights for your own protection.

In the latter regard, it is observed that Respondent contends that the "rights" of an "individual member" referred to by Lucassen were as to those alluded to in the preceding paragraph regarding the local admission without approval of membership, rather than as to Vogel's complaint over Carroll's suspected initiation of a role in opposition to Vogel's reelection, a subject of Vogel's later July charges and alleged unfair labor practice, discussed infra. In passing, I conclude and find that Respondent's argument that would limit meaning to relation on seating Carroll without membership approval is not persuasive.

[2] Sec. 46G of the constitution, as amended January 1, 1982, in evidence provides:

> On entering a Local Union a member with a Transfer Card shall present same with Dues Book to the Local Union Office. If the Card and Dues Book are in order, and the identity of the member established to whom the Card is granted, the member shall be admitted to the Local Union as a member thereof, provided there is no strike or lockout in effect in that district, and the membership shall be so notified at the next regular meeting.

6. Carroll's support of a challenger to Vogel's reelection as business representative

Donald L. Shaw was a member of Local 644 from the late 1960s through March 1, 1983. Shaw held prior office in Local 644 as a sergeant-at-arms and he later, in the mid-1970s ran unsuccessfully for the office of recording secretary. The 1982 nominations for office in Local 644 were held on May 12, and the election was held as scheduled on Saturday, June 5. Another member of Local 644, Ron Giles, placed Shaw's name in nomination to run against Vogel for the office of business representative, only. Vogel ran unopposed for the office of president.

Carroll participated in the first day of the road work in Shaw's campaign after his nomination by helping Shaw in one 5-hour period contact a number of union members in Havana, Illinois. Carroll also contributed $20 to Shaw's stamp and envelope fund. Carroll additionally made phone calls and spoke to two or three members at a jobsite. In all Carroll spoke to 18–24 members in Shaw's behalf. Immediately prior to the election Carroll became directly involved with Vogel in taking a position directly contrary to that being advanced by Vogel on an issue of voting eligibility of members who were delinquent in payment of their dues.

Thus in early June, with the election upcoming in but a few days, some members of Local 644 were in arrears in their dues payments by as much as 5 months. Vogel testified that Carroll thought that Vogel was telling the members a "bunch of bull" when he informed the members that they had to square (pay) up their dues in full to be able to vote in the election. Vogel relates that Carroll told member Dave Shallenburger that it was not necessary for Shallenburger to square his dues all the way up to be able to vote, but to pay them only up to 3 months.

Carroll confirmed that Shallenburger had come to Shaw's home while Carroll was there, and that Shallenburger was 3–4 months in arrears on dues payments at the time. According to Carroll, Shallenburger wanted to vote, but did not have the money to pay his dues in full. Carroll told Shallenburger that Carroll did not think he could vote unless he paid up 1–2 months. Carroll's version is that he told Shallenburger that he would call Lucassen, and did so that same day. After Carroll spoke to Lucassen, he and Shallenburger then went to Vogel's office and Carroll told Vogel that Lucassen had said a member had to pay only up to 2 months (in arrears). Vogel then called Davis to find out what he should do. According to Carroll Davis also spoke to Carroll. Davis asked Carroll, "What the hell are you doing getting involved in something like this?" Carroll's version is that he told Davis, "Well, the young man asked me a question and it deserved an answer." According to Carroll, Davis then told him "it was none of his g—d— business."

Vogel confirmed that Carroll had come to Vogel and told him that Carroll had called Lucassen, and that Lucassen had said that a member had to pay only up to 3 months and could vote. However, Vogel did not recall Shallenburger as being present. As noted, Vogel confirmed that he called Davis, but did not think Carroll

was present at the time; and Vogel testified affirmatively that he was not present when Carroll had called Davis.

Davis, in contrast, recalled that he had a conversation with Carroll just prior to the election, in which Carroll had made inquiry on what it took to vote in the election. When Davis at first told Carroll that he did not know what he meant, Carroll specifically asked Davis "how far does a guy have to be paid up in his dues to vote?" Davis replied he has to be a member in good standing. Davis recalled that Carroll then asked, "What if a guy is 5 months in arrears and pays 2-3 months, can he go in and vote?" Davis then replied, "No, the Constitution is clear, he has to pay all his arrears in full just to be entitled to vote." Davis then asked Carroll if he was getting messed up, or told Carroll that he hoped Carroll was not getting himself mixed up in this election. Carroll replied, "No, there is a bunch of guys out in the parking lot asking me, and I have to answer them." Davis then said, "I hope you realize what you are doing, you know the penalty you are under." Carroll replied he was only giving them information. Davis testified definitively that Vogel had not begun this conversation.

Davis further recalled that Carroll had called him back the very same day. Carroll at this time told Davis that Davis was wrong; that Carroll had called Lucassen who had told him that if the members paid up to being less than 3 months in arrears, they should be able to vote. Davis testified that he then told Carroll that he did not care what Lucassen said; that Lucassen could not override the constitution, and that it took the vote of the convention to override the constitution. Davis further told Carroll that if he was asked on election day, that would be his same decision.

Vogel testified that when Carroll questioned him, Vogel called Legal Counsel Robert Pleasure in Washington, D.C. Pleasure advised Vogel that when a member falls in arrears that far, after 3 months, "you have got to square all the way to the front before you can vote." (The seemingly pertinent carpenters constitution and laws, sec. 44 L provides: "A member who owes three months' dues or who has not squared his or her coverage in full . . . is not in good standing and is not entitled to vote.") Vogel relates that he then called Carroll and told Carroll he was wrong. Davis testified that Vogel had called him to find out if Davis was aware of Carroll's conversation with Lucassen. Again, Davis denied Carroll was put on the phone at that time. Vogel confirmed he had called Davis, without further inquiry being made of Vogel by any of the parties as to the nature of their conversation. All these conversations had occurred in the 1-2 days prior to the election. In this instance I credit Davis' and Vogel's account.

C. *The Alleged Violations*

1. Iber operations in Pekin; the Courtside place high rise

Unes is in charge of manpower needs for Iber insofar as material in both Peoria and Pekin. Unes has been a member of Local 183 for 25 years though he had not worked with tools for a number of years. Vogel relates that Iber had not had work in Pekin Local 644's jurisdiction for some 4-5 years before having in the material time two small jobs and a high rise. Vogel described the smaller jobs as being that of an office building, and also a small addition for Sheerex Chemical (Sheerex) at its Duck Creek Power Station. Vogel was not personally aware that Iber had earlier had a fourth job in Local 644's jurisdiction, some remodeling work at a Lum's restaurant, about February, 1982. Van Horn however was aware of it; and that Wiley Holmes, a member of Local 644, had worked there, which was confirmed by Unes.

Iber's Courtside Place, Pekin high rise project for family and elderly, was apparently composed of a 13-story, 110-unit high rise, and five 50-unit low rise buildings (collectively the Courtside or Pekin high rise project). The Courtside project was financed by HUD. It had been in the works as an Iber project, apparently on invitational bid, for about 18 months before construction was actually begun in September 1982.

In that regard, Van Horn recalled that it was even a year before, in September 1981, that he and Vogel had been first invited to a prejob meeting with Iber officials to discuss the Courtside project. Vogel was unable to attend, but Van Horn attended the meeting with Unes and Williams.

Unes has staffed close to 100 jobs for Iber in the last 10 years. Unes acknowledged that under the contract he has with the District Council it states that when he goes into another local's jurisdiction he has to call that Union for men, depending on the size of the job; and he acknowledged that the first man referred is automatically their appointed steward. In confirming that the meeting with Van Horn took place, Unes asserted there had been then an initial agreement reached with Van Horn for a 50-50 split, viz., that Unes would hire 50 percent of the required work force from his guaranteed 40-hour men (generally from Peoria Local 183) and use 50 percent of referrals from Local 644. Van Horn however has testified that there was no agreement then actually reached, with Unes insisting on a 50-50 split, and with Van Horn asking for 70-30. Van Horn did testify that Unes had introduced Williams at the time as the prospective superintendent, and (from the start) had advised that his own regular Paddock (of Local 183) would be the first on the jobsite and (as foreman) would run the low rise. Van Horn testified that there were thereafter many schedules, with one delay after another, because of HUD problems, city council problems, etc., and no one knew when it would start. Nonetheless Vogel has acknowledged that as of May 1982 he was aware Iber had the job and that construction would likely start in a few months.

2. Carroll's inquiries of Unes about employment at the Courtside Place high rise

Carroll recalled it as being about the first week in June that he went to see Unes and spoke to him in the Peoria shop. Carroll inquired about Iber's Pekin high rise. Unes told Carroll that he did not know when it would start. Carroll acknowledged that he was not concerned with whether the high rise project had been prejobbed. Carroll asserted that his understanding of a prejob was that it was to review the rules and regulations of the job, and

not necessarily on manning issues of how many men and what the manning was going to be. Although Carroll had never attended a prejob conference, in the light of contract provisions, his general background, and length of service in the industry, I find Carroll's responses in this prejob area were simply something less than frank and candid. I rather find the fact to be, that which he otherwise acknowledged, viz., that he was simply not concerned at the time with whether Iber's high rise project had been prejobbed by Local 644.

According to Carroll he was applying with Iber for a job as a carpenter, foreman, or general foreman. Carroll's version is that he told Unes of his qualifications, and told Unes that he had three letters verifying that he had done all types of carpenter-millwright work and that the companies he had worked for were satisfied. Carroll relates he offered the letters to Unes, "and he said, no, it was not necessary to see my letters, he thinks I know what I am talking about and he will use me on that Pekin job. He also told me to get ahold of Carl Williams that was going to be superintendent down there. He said, if you see Carl, introduce yourself and let him know that I hired you." (Carroll acknowledged that he never subsequently contacted Williams.) According to Carroll he told Unes that Carroll would probably have two business agents who would be upset about Unes hiring him; that Unes then told Carroll he would hire whomever he wanted to on that job; and that Unes told Carroll Unes would call Van Horn in an hour or so and notify them that Carroll was going to be used on that job. Unes told Carroll to keep in touch because he did not know when the job would start. According to Carroll, in the same conversation they also had discussed a Mossville maintenance job that Iber had, and that Unes had said if he had work there, he would put Carroll to work today at Mossville as he needed good people there.

Unes recalls three or four meetings with Carroll in Iber's Peoria office or warehouse, and two or three phone calls. (I conclude and find there were six contacts in all.) Unes confirms that Carroll came to his Peoria office one day about 6:30 to 7 a.m. about the first week in June. Carroll had heard the Pekin high rise was going to start and he wanted to know if there was any chance of employment. Unes said there were no promises and no guarantees in this market; that they did not have a contract yet, and that he had some of his own people that he wanted to staff the job with. Unes categorically has denied that he told Carroll that he would hire Carroll. Unes relates that Carroll also mentioned Mossville, and wanted to know if Iber had any work up there. Unes told Carroll that they had a time and material contract there, but they had not done any work up there. Unes again denied that he told Carroll that he would hire Carroll at Mossville if he had work. Unes testified that Carroll had never worked for Iber before.

According to Unes' recollection Carroll came back the next day and brought with him some letters of recommendation to show Unes. Unes testified that he did inquire of Carroll from whom the letters were, and Carroll named Belding and one or two others. However, when Carroll then asked if Unes wanted to read the letters, Unes said no, he was not concerned, and did not want to see them. Unes again denied that he had told Carroll that he would hire Carroll.

In the latter regard, however, it is to be observed that Unes acknowledged that at no meeting with Carroll did Unes ever tell Carroll not to come back, or that Iber would not employ him. (Unes has testified throughout all six contacts with Carroll that he had never told Carroll either that he would hire, or would not hire Carroll.) Unes denied there was a reason why he did not tell Carroll not to come back. Although Unes has also denied telling Carroll to try calling him in a few weeks, he testified significantly that: "I may have told Carroll to try calling."

3. Carroll's report to Van Horn on his expected employment by Iber

Carroll related that after his first visit with Unes he waited the hour or so and then went in to see Van Horn. Carroll asked Van Horn if anyone had called for him to go to work. Van Horn said no, and Carroll left. On the next day Carroll returned to the Union's office and asked Van Horn if he had heard anything from Tousley-Iber, Carroll then told Van Horn, "I was up there and the man hired me for the high rise," and Van Horn replied, that he did not.

Van Horn related only one conversation with Carroll about the Tousley-Iber job in early June. Van Horn recalled that Carroll came into his office and asked to use the phone. Van Horn had a problem at Iber's Sheerex job, as Iber people had come into Local 644's jurisdiction and were not paying dues checkoff, industry fund, or pension fund to Local 644 under the contract. Van Horn had stepped over to the nearby pension office. Van Horn related that after Carroll made his phone call, he came out of the office over to Van Horn and told Van Horn that he would be receiving a call from Unes, that they were going to hire him. Van Horn testified he only said, "Oh," as that was contrary to proper procedure. Van Horn reported the incident to Vogel, and he told Vogel he was going to set up a meeting with Unes. Vogel confirmed receiving a report from Van Horn that Carroll had claimed he was hired by Iber for the Courtside high rise job. Vogel testified Van Horn's report of Carroll's statement did not surprise him.

4. Van Horn and Vogel meeting with Unes

Van Horn set up a meeting with Unes the same day; and Vogel and Van Horn met with Unes in Iber's Peoria office. Unes placed their meeting as being 4 or 5 days after Carroll's second visit to Unes. Vogel described the purpose of the visit as being in part to talk to Unes about the arrangements for Iber's obtaining carpenters for the high rise; and in part to discuss with Unes fringe payment delinquency on Iber's Sheerex job, inasmuch as Local 644 had observed six Peoria men working there who had not paid dues checkoff to Local 644, as apparently required under the contract.

Van Horn related that when they broached the Sheerex problem to Unes, he assured them that it would be taken care of, explaining that the office girl had thought the Sheerex jobsite was in Peoria. On the sub-

ject of the hiring for the high rise, Vogel related that he asked Unes how many men he was going to bring to the high rise. A limit on the job had not been set. Unes told Vogel that he had 15–20 men on his payroll, and that he intended to use them all on the job. Vogel's recollection was that he then asked Unes if he had hired Carroll, and Unes replied that he had not hired anybody. Pointing to sections of the contract, Vogel told Unes that the Pekin Local would refer the men to him, and that he told Unes specifically that Unes should not be hiring them off the street and bypassing the union hall. Vogel also told Unes, "if you start hiring them off the street, your phone will be ringing off the wall, and you won't be able to sleep at night." Unes replied, "You are exactly right." Vogel said it would be quite a problem considering how bad the work is, and also that it is the only job running. Vogel told Unes that he should refer to the hall "if he wanted to hire men." Unes responded that, technically, he did not have to hire anyone from the Pekin Local, except the steward, and he could hire anyone he wanted.

John Luft, a member of Local 644, had previously been referred to Iber by Local 644; and he had become a steady employee of Iber. Vogel relates that Unes then asked if Vogel had anymore men like the one (Luft) Unes had gotten from Local 644. Vogel replied yes; and Unes said he would like to have some of those. Vogel then inquired about minorities, and Unes replied he thought he would have to have some. Vogel replied he had some. At this point Unes said he would take 50 percent from Local 644. Vogel said 70–30. Although Vogel has acknowledged that Unes did not buy it (the higher percentage favoring Local 644) at the time, Vogel also testified that that was the way it ended up, as the job peaked about 35 men, Unes brought 15 to Pekin, and he (Local 644) referred about 20 men. (Actually Vogel essentially referred but three men, the steward, the minority, and one other man, with Van Horn referring all the others from September 1982 through January 1983, at which time Van Horn was hospitalized.) Van Horn's estimate was 12 (Unes) men of a 35 peak.

Van Horn's recollection of the discussion of Carroll at this meeting was that Unes mentioned he had had a visitor to his office, naming Carroll. When they asked if Unes had hired Carroll, Unes said no, he did not have a signed agreement on the job for one thing; and that he would go through the hall. Van Horn denied that either he or Vogel had told Unes not to hire Carroll. What Van Horn asserts he told Unes was that if Unes hired it would have to be through the Union hall, though Van Horn told Unes that Carroll did not have call back rights. Van Horn confirmed that Vogel told Unes that Carroll would have to go through the referral hall.

Van Horn denied that he told Unes that Carroll had told him that he had been hired. In that regard, however, Van Horn also testified and evidenced some degree of hostility in doing so that he did not know what Carroll had believed at the time. Van Horn did acknowledge, as did Vogel, that he had not spoken before to any contractor who had hired Carroll about Carroll or about hiring Carroll. According to Van Horn, their conversation otherwise covered Unes not having a signed agreement with the city; that apparently the city was dickering over ground price; and that Unes hoped to get the project started before winter. However, Unes also again confirmed who the superintendent and foreman were.

Vogel also acknowledged that he did not discuss Carroll's prior work experience with Unes nor state that he would be happy to refer Carroll, explaining that Unes did not ask. Vogel denied that when he spoke to Unes he had no intention of referring Carroll. Vogel candidly testified that he was aware that Carroll had not worked for 6 months, and that he felt Carroll had had his share of work in the last couple of years. He also testified that Carroll had not spent any more time on the bench than anyone else. Vogel otherwise testified that he would have sent Carroll, or anyone else, if Unes had asked for him by name.

Unes was called as a subpoenaed and seemingly reluctant witness by Respondent, though questioning by the General Counsel established that the affidavit of Unes had been made available to Respondent prior to hearing. Unes essentially confirmed that they wanted to know if he had hired Carroll and that he had replied, "No, I don't even have a contract, how could I"; and he asserted that was the only conversation he had had about Carroll. Unes otherwise confirmed he had received a call from Van Horn wanting to talk about Sheerex benefits; and to the best of his knowledge Van Horn also had asked him then if he had hired Carroll and he had answered then. At the hearing, Unes did not have present recollection whether Van Horn had asked the question over the phone or in the visit, though the General Counsel established that in his prior affidavit Unes had related that Carroll's name was not mentioned in the meeting with Vogel and Van Horn. Unes said his statement would have to be correct. On the other hand, Unes has earlier stated the question probably did come up in the meeting, though he had testified also that he did not know whether it did. No evidence was offered whether or not Unes had, in affidavit, recorded the Van Horn phone discussion. Unes otherwise asserted essentially that if it did come up in the meeting, his answer would have been the same, "I could not have hired the man without a contract." Unes did testify that in the meeting with the union officials it was said that they wanted the job to run smoothly; and he said he would also, and that he did not foresee any problems.

Unes otherwise confirmed Vogel that he had told them during their discussion that technically all he had to do was hire one man out of their Local. Unes did confirm that he has on occasion gone into another Local's jurisdiction and hired only one man, though the details thereof, e.g., job size, etc., do not appear on record. Significantly, although testifying that he had had a prior agreement with Van Horn to a 50–50 split, Unes essentially confirmed Vogel also that the percentage in use of Local 644 members was higher in testifying that the job peaked at 30 give or take a few, with all but 9 being members of Local 644. Unes also corroborated Van Horn to the extent of confirming that Carroll had not worked for Iber before.

5. Unes' subsequent conversation with Carroll

Carroll's recollection was that in the first visit with Unes, Unes had told him to keep in touch because he did not know when the job would start. According to Carroll, it was in his second visit with Unes, in the office, when Carroll asked Unes how things were going, Unes informed him of the visit of Vogel and Van Horn. Thus, according to Carroll, Unes told him, "Your two business agents were up here raising hell about me hiring you." Carroll relates that Unes said at that time that he still would hire whomever he wanted to, and if they complained too much, he would hire one man from the Pekin Local, and one man only, and that would be the steward out of the hall. Only after a leading question as to problems discussed did Carroll additionally testify (and without corroboration) that Unes told him that Vogel and Van Horn told Unes that Carroll would create problems on the job.

Unes' version is that there was another meeting or phone call from Carroll. Carroll asked him what was happening or new. Unes replied nothing happened yet. Unes testified (only) that during the conversation Unes mentioned that the business agents had been in to see him.

6. Carroll's confrontation of Vogel, with Shaw as witness

Carroll relates that he drove to Pekin about the first week in July and spoke to Vogel, and that he asked Shaw, who was in the hall at the time, to come in as a witness. According to Carroll he asked Vogel, "Did you and Van Horn go up to Unes' office and try to stop them people from hiring me?" Vogel replied, "Yes, I did." When Carroll said, "You can't do that," Vogel replied, "The hell I can't." Carroll acknowledges a shouting match then developed. Vogel's version is essentially similar except that Carroll first spoke to him alone, and then got Shaw, and Vogel denied that Carroll had stated Vogel had tried to keep Iber from hiring Carroll, but from having hired Carroll for the high rise. Vogel's version is thus that Carroll first came into his office alone and wanted to know if Vogel had gone up and seen Iber about Carroll not getting hired. Vogel told Carroll he had told Unes that Unes could not hire Carroll without going through the union hall. (Vogel was supported by Van Horn that the statement was earlier said to Unes.) Vogel added, "That is what I stood on." It was then, according to Vogel, that Carroll went out and brought Shaw back in as a witness; and Vogel told him the same thing. Carroll then said that Vogel could not do that; and Vogel acknowledged that he had then replied, "The hell I can't." Vogel, however, also testified that he told Carroll (in Shaw's presence) that Unes did not have the right to hire him off the street without referring to the hall first.

Shaw, called as a witness by the General Counsel, placed the incident about the last week in June. Shaw relates that he was in the hall, as usual, waiting for a job referral. He confirms that Carroll approached him and asked him to go into Vogel's office to witness something. Shaw's recollection is that Carroll asked Vogel, "Did you go up to Iber and try to talk them out of hiring me on the job?"; that Vogel replied, "Yes,"; that Carroll then said "you can't do that"; and that Vogel had replied, "the hell I can't." However, Shaw testified further, and substantially corroborated Vogel, that Vogel had said something like he had 24 hours to man the job, or words to that effect. It is clear enough from the above, and I conclude and find, that Vogel's statements to Carroll at this time were not in nature admissions that he had sought to prevent Unes from hiring Carroll at all, but an acknowledgment to Carroll that he had taken the described action with Unes to prevent Unes' reported hire of Carroll off the street in circumvention of Unes' prospective referring to the hall for referral of required men when the job started.

Carroll's version is that Shaw then asked Vogel, "Am I benched?" and Vogel said no. Shaw then asked Vogel, "Well why can't I get a job out of this hall?" According to Carroll, Vogel then said, "The people won't let me hire you, or put you to work." Carroll relates he then asked if he was benched; and Carroll said Vogel's reply was, "Why don't you go out of town and go to work, you don't have any problems getting a job out of town." Carroll said he had a job right here for Tousley-Iber. Carroll also testified that he had not previously been looking for a job out of town, and as earlier noted, denied the January conversation in regard to resumes as reported by Davis, and suggestive of the contrary.

Shaw confirmed that he had asked Vogel if he was benched (meaning that the Union would not put Shaw out on a job) and that Vogel said no. Vogel in initially admitting to Shaw's colloquy about being benched added that he told Shaw that he had never benched anyone in this union hall; and (initially) that as far as he knew that ended the conversation. Shaw additionally testified that he then said, "Well, it seems like I have an awful hard time getting a job in this local." (Shaw explained he was partly affected in making the inquiry by the circumstance that Shaw had worked on an annual maintenance job the year before and been promised to be recalled by the superintendent. Shaw later learned the superintendent was himself no longer with that company.) According to Shaw, Vogel replied that if he were to put Shaw to work he would catch all kinds of hell. Shaw testified that though the statement kind of floored him he did not pursue it, as he thought he better not bring it up anymore. (The record does not reveal whether Shaw had run out of unemployment compensation at this time.) When asked about the remark directly, Vogel testified that maybe he did tell Shaw that he would "catch all kinds of hell" if he put Shaw to work, though adding that he did not know what exactly was said, and also asserting that he did put Shaw to work since, so he did not know what the difference was. I find Shaw's recollection, essentially acknowledged by Vogel, is more reliable. However, Shaw's recollection of subsequent referral in October or November was mistaken. The Union's record of referrals, in evidence, reveals that Shaw was one of 11 men referred to Atlantic Plant Maintenance on September 13, *before* the first referral to the high rise of John H. Gay, appointed steward on September 14, and

indeed significantly before the start of several subsequent referrals there in succeeding months commencing on October 8. The complaint does not allege that the Union had unlawfully failed to refer Shaw earlier nor that Vogel's remark was itself coercive. However, the General Counsel in brief contends the latter was fully litigated and now seeks an 8(b)(1)(A) finding thereon.

The complaint does allege that Vogel told job applicants Carroll and Shaw that Vogel had caused Iber not to hire Carroll, and also that Vogel would not permit Carroll to work in the Local's area and that Vogel had urged Carroll to leave the Local area to find work.

Again, testifying as the first witness, on severally directed inquiry thereon, Vogel acknowledged that maybe he had told Carroll that Carroll did not have trouble getting work out of town; that maybe Carroll had said he should not have to go out of town or something like that; and that Carroll probably did say he should be able to find work right here, and Vogel supposed also that Carroll did say he had found work right here at Iber. Despite Vogel's nonevasive and candid responses above, Vogel was not asked whether he had initially told Carroll, "Why don't you go out of town and go to work," as was later asserted by Carroll. It is thus rather significant that Shaw's testimony was only that Carroll had first said he should not have to go out of town to work; and that Vogel then replied that apparently Carroll did not have any trouble finding work out of town. I preliminarily find that there is directly conflicting accounts in the General Counsel's own evidence (Carroll and Shaw) on Vogel urging Carroll to go out of town and find work. I further preliminarily conclude and find that evidence is not convincing that Vogel had unlawfully urged Carroll to do so, and in that connection, I observe there appears a complete lack of evidence to support allegation that Vogel told Carroll and/or Shaw that he would not permit Carroll to work in Local 644's area.

7. The controverted Davis-Carroll conversation

Davis testified that he had a conversation with Carroll around the last week in June, though later clarifying it had to be about the third or fourth week in June. Carroll called Davis and said that he had a job at Tousley-Iber and that Vogel and Van Horn were not going to allow Carroll to go to work for them. Davis asked where the job was, and relates that Carroll said the high rise in Pekin. According to Davis he then told Carroll that job was months off and asked Carroll if he meant he was hired that day. Davis said Carroll replied, "Well no"; and when Davis then asked when Carroll was going to go to work, that Carroll had then said, "*Well they promised to keep me in mind* when the job started." According to Davis he then told Carroll, "You know better than that"; and he reminded Carroll that when Davis and Carroll were running work, "That is what we do to get rid of people when we don't want to talk to them." (On cross-examination Davis clarified it more as being a polite action taken when "I don't want to talk to you *at the time.*") Davis relates that Carroll at this time said, "Oh well you know how it is"; and Carroll then started talking about his civil rights were being violated; and that Davis and/or they was not going to get away with it, that he was going to an attorney. Davis did not have anything to do with that. Davis otherwise relates that he did promise Carroll he would check it out with them. On rebuttal Carroll denied that the above conversation took place. Carroll testified that he did not at any time complain to Davis about Vogel's contact with Iber; and otherwise related, "I don't have that much faith in Mr. Davis, and I don't think it would do any good to speak with him."

According to Davis he did contact Vogel that same day. Davis asked Vogel if Carroll had told Vogel that he had been promised a job. Vogel replied yes. Davis asked if Vogel had had a prejob. Vogel replied that Van Horn had met with them once, that the job was months away from starting, and that it was too early to have a prejob. Davis instructed Vogel to make sure he did have one and to review the hiring procedure when he did, per the standing instruction. A prejob conference was subsequently held on August 24, discussed infra. In the interim there were other developments.

8. The uncontroverted Carroll contact of Unes about intent to file charges

Carroll visited Unes again at the office. Carroll told Unes that he was going to file a grievance or a charge against the Union with the NLRB. Unes asked Carroll why he was filing a charge against the Union. Carroll said the Union was stopping him from getting a job not only with this company, but with many other companies. Unes told Carroll he did not care what Carroll did as long as he did not get Unes involved; that he would not want any problems on the job; that Carroll said Tousley-Iber would not be involved; and that Unes said as long as Carroll did not involve him he did not care, or that he could care less. Carroll did not contest this conversation; and otherwise acknowledged there was another instance in which he had been promised a job, which he did not get, but thought it was because of the Union, but could not prove.

9. The unfair labor practice charges, and internal union charges, and cross-charges

As noted, the charge herein was filed by Carroll on July 12 against Local 644, notably naming Vogel on its face as trying to keep Iber from hiring him for arbitrary reasons. A copy of that charge was served on the Union on July 13. By letter dated July 15, Vogel filed his own internal union charges against Carroll with the District Council. Vogel's written charges made at the time, in the main, best speak for themselves:

> 1. Violation of his sentence of January 5, 1981 which restricted him from any union activity whatsoever for a period of five years.
>
> On or about June 3, 1982, prior to our local election, Mr. Caroll was seen on various job sites inciting the membership to vote against me in the upcoming general election and to vote for his candidate. He also called the General Office of the United Brotherhood and was informing members of Local #644 that it was not necessary to square their

dues to be intitled [sic] to vote in the election. This is clearly the duty of the Financial Secretary.

2. Section 55, Paragraph 1 of the Constitution and By-Laws of the United Brotherhood. Mr. Carroll caused dissension among the members by accusing me as President of Local #644 of not working for their best interests in the case of pension increases which he felt should have been much more. Mr. Carroll also stated that as President of Local #644, I did not properly invest our pension funds wisely.

3. Section 55, Paragraph 13 of the Constitution and By-Laws of the United Brotherhood. Violating the Obligation. Mr. Carroll is not obedient to authority and charitable in judgement [sic] of his Brother members.

At the hearing, Vogel additionally testified that his charge of Carroll not being obedient to authority was made in reference to Carroll's membership pledge, that Carroll was too headstrong, would not listen, *and had argued with Vogel about every job.* In regard to his charge of Carroll not being charitable in judgment, Vogel asserted that Carroll did not have many good words to say about any of his brother members, Vogel asserting Carroll had been found guilty of that earlier. Vogel did testify that the fact Carroll had recently called the International on the eligibility question had nothing to do with Vogel's charge of Carroll's violation of his sentence. However, in that regard, Shaw's recollection of the recent Carroll-Vogel confrontation recounted that Vogel had therein told Carroll he had a direct or hot line to the International. Although Vogel otherwise asserted that all of Carroll's misconduct had occurred by early June, he also related that Carroll was already getting involved in (union) politics clear back to February 1982.

On July 16, Carroll filed his own cross-charges against Vogel and Van Horn with Davis and the District Council, copy to the United Brotherhood. Carroll's handwritten charges specified:

On or about the 1st of July violated the following:

Section 55, paragraph 1 (one), 5 (five), 6 (six) and 13 (thirteen).

Darrell Vogel and Bert Van Horn found out Dick Unes of Tousley-Iber Co. was going to give me a job on highrise in Pekin. They then went to see Dick Unes and tried to talk him out of hiring me. Also seems strange after Darrel Vogel found out I had gone to the National Labor Relations, on this matter, I found in my mail box today a new set of charges preferred by Darrel Vogel today.

If he feels these charges are true why were they not filed before they went to see Dick Unes.

As earlier noted section 55(1) relates to causing dissension, section 55(5) willful slander of a member, and section 55(13) violating the obligation (which Carroll viewed as the prevention of him from working for Iber). Section 55(6) relates to charge of defrauding the United Brotherhood.

10. Carroll's interim acceptance of other employment and transfer of his membership out of state

Carroll relates that about mid-July he had started contacting certain individuals about employment and was informed that Furin and Cowen had successfully bid a job in Colorado. Carroll then obtained employment with Furin and Cowen and has worked in Colorado since the end of July. Carroll testified that he sought the employment elsewhere because his *unemployment was then running out,* and because he did not feel that he had much of a chance of getting a job around Pekin with the business agent trying to harass him or keeping the people from hiring him. The record is clear that on July 26 Carroll transferred his membership out of Local 644 to Local 510 in Berthoud, Colorado.

It is, however, also uncontested that one evening, about 5:30 p.m., Unes had received a phone call from Carroll. Carroll told Unes that he had a job out of State. However Unes testified that Carroll wanted to know if anything had happened on the high rise. Unes told Carroll that if he had a job out of State, he had better take it, because as of that date they did not have a contract to start; and that he did not know when he would get started on the Pekin job.

11. The subsequent prejob conferences

On August 24, an Iber-carpenter prejob conference was held on the high rise. Present were Neal Tousley, Unes, Vogel, and Van Horn. The various subjects discussed are in evidence, including the parties holding their positions on staffing. Insofar as appears additionally material, Unes otherwise told Local 644 that Iber would treat them fairly and would pull their (regular) people off the jobsite when needed on other jobs. A request was made by Iber to use Luft as steward, but the Union held to making that appointment themselves, though giving Iber Local 644's assurance that the steward appointed would be well qualified for the job, as they wanted a smooth job, just like Iber did.

On September 1, a later prejob conference was held with all the building trades, with fuller details of the job provided all, including that project completion date was December 1983 and with identification of subcontractors. The actual contract with the owner had been signed some time around the first part of September.

Carpenter Steward John Gay was subsequently referred on September 14. The first Iber regulars were on board by week ending September 22. By week ending October 1, Vogel had referred one minority (Reuben Watts) and one other member close to retirement (Edwin Tribbett) who worked only a week and a half. All other referrals in 1982 were made by Van Horn, inclusive of and on Iber's request for Pat Ryan, and for Jim Booth who had not worked for Iber before, but was a personal friend. While not appearing on the referral list, Van Horn testified that Wiley Holmes, a member of Local 644, was a callback by Iber, and with corroboration of Unes, who testified credibly that Holmes had worked for Iber in the prior year. Van Horn otherwise generally testified, and credibly so, that everyone requested by Iber

by name was referred, and that Carroll was *never* so requested by name, by Unes.

Finally, in evidence are all the weekly summaries of individuals who worked the Courtside Place Project from September 1982 through March 1983. While they portray variance from Vogel and Unes' earlier summaries, they support and warrant a finding now made that Local 644 members generally enjoyed greater than 50 percent of the work done.

12. The disposition of the internal union cross-charges

Minutes of the regular meeting of the District Council held on August 2 were introduced by the General Counsel. After reciting process of other trials, the minutes pertinently provide:

> Communications.
>
> 1. A letter from the attorney representing Brother Ed Carroll objecting to the charges filed by Brother Darrel Vogel as being untimely was read. After discussion a motion was made and seconded to dismiss the Charges. Motion carried.

The executive board meeting of same date pertinently provided:

> Charges preferred by Brother Ed Carroll against Business Representative Darrell Vogel and Bert Van Horn were read. The accuser was not present. Both of the accused appeared in their defense and were excused. A motion was made and seconded to dismiss the charges for lack of merit. Motion carried.

Essentially Carroll relates that his attorney had informed him that the Union was going to drop its charges against Carroll, and the attorney advised Carroll to do the same. In agreeing to do so, Carroll thought his attorney had handled it, but he did not know that and he acknowledged that he, personally, did not notify the Union he was dropping the charges. Essentially, Vogel testified that he did not drop his charges against Carroll, but that his charges were dropped by the District Council which said they were too late; and Vogel otherwise testified that he thought Carroll's charges against him were thrown out. Although Davis had testimonially supported a June report by Vogel that he could prove that Carroll was campaigning during the election, had interfered with election process, and had stated his intent to bring charges against Carroll, Davis also testified that only the constitutional complaints of Vogel against Carroll were later dismissed as being untimely. Davis explained there is no time limit on Vogel's contended violation by Carroll of his earlier sentence. Those charges, according to Davis, as contained in paragraph one of Vogel's charges were in fact dropped.

Contentions

The General Counsel essentially contends that Respondent operates a nonexclusive hiring hall system that permits covered employers to hire workers directly, and that it permitted Carroll to solicit work on his own from Iber. The General Counsel argues that Carroll had, over the years, repeatedly obtained similar employment directly from contractors within Respondent's jurisdiction; and that Carroll should be here credited that Unes had hired Carroll, over Unes' denial. The General Counsel further contends that the evidence of Vogel and Van Horn's subsequent communications with Unes, the report of Unes to Carroll about the business agents' visit and their conversations with Unes, and Vogel's own subsequent admissions to Carroll, warrant that findings be made that Vogel and Van Horn attempted to cause, and did cause, Iber to refuse to employ Carroll.

It is the General Counsel's essential contention that Vogel and Van Horn have acted in that unlawful manner because of a personal animosity they bore for Carroll. The General Counsel's argument is that the animosity developed over the years toward Carroll's largely protected concerted activities, inclusive of Carroll's exercise of a right to speak freely concerning internal union affairs, Carroll's right to criticize the incumbent union leadership, and Carroll's support of opposing candidates in the June election. The General Counsel would point to instances of prior hostility evidenced in the work disputes, the early charges brought by Van Horn and Vogel, Vogel's own subsequent failure to follow International Constitution provisions regarding Carroll's transfer of his membership, and Vogel's revealed February plan to file, and July-activated filing of charges against Carroll because of Carroll's protected activities in opposition to Vogel's candidacy for election, and Carroll's continued contact of the International. The General Counsel centrally contends that Respondent's asserted defense of attempting to enforce its collective-bargaining referral system on examination is revealed as a mere pretext, and in that connection the General Counsel argues that Respondent has unsuccessfully met its burden to rebut the prima facie case made by the General Counsel.

Otherwise especially noteworthy of argument is the General Counsel's advanced reliance on Carroll's (uncorroborated) account of Unes informing Carroll that the business agents had told Unes that Carroll would create problems on the job. In contrast, it is the General Counsel's contention that a close analysis of Davis' testimony as to a third or fourth week in June phone contact by Carroll about the Iber job would reveal that Davis had embellished his testimony about that conversation in such manner as to detract overall from his original direct testimony, namely, Carroll's admission to him that Unes had merely "promised to keep him in mind" when the job started. The argument is made that (Davis' relations made) that the conversation covered Carroll's claim that his civil rights were being violated by the Union and that they would not get away with it because he was getting an attorney, warrant Davis' version to be wholly discounted, and Carroll's unequivocal denial of having had any such conversation with Davis about the subject of his Iber employment difficulty, credited. Finally in that regard, the General Counsel asserts Davis' testimony must itself be evaluated on the basis of Davis being a hostile and biased witness as, is argued, evidenced from

Davis' own reactions to Carroll's report of calling the International on voting eligibility; his judgmental statement that Carroll's involvement with voter elibigility had violated Carroll's sentence of suspension of membership rights; and Davis' subsequent assistance (advice) given Vogel in regard to the timing of Vogel's filing of additional charges against Carroll.

Finally the General Counsel contends that a conclusion is inescapable from the timing of Vogel's July 15 internal union charges belatedly brought against Carroll, following on the heels of Carroll's instant unfair labor practice charges filed on July 12, in light of clear hostility of Vogel to the protected activities of Carroll evidenced contextually therein, that Vogel has filed the charges with the District Council in retaliation against Carroll because he had recently filed the instant unfair labor practices, thereby filing the union charges in violation of Section 8(b)(1)(A).

Respondent contracontends that the evidence warrants findings that Iber not only never hired, but never intended to hire Carroll. Respondent would rely on Davis' testimony of admission by Carroll that he had not been hired, but only promised he would be kept in mind. Respondent also argues that Carroll, who by his own account of already being hired, has asserted that he had been directed by Unes to contact Williams, but never contacted Williams, but rather continued to contact Unes, has not acted as if he had been already offered a job by Unes.

Otherwise Respondent essentially contends that Respondent in any event could lawfully attempt to enforce the referral provisions of its collective-bargaining agreement; and that Vogel and Van Horn in their approach of Unes in regard to Carroll's employment, were acting reasonably, with a sole concern therein, because Carroll had made the claim that he had been hired (in effect) "off the street" and not through referral by the Union.

Respondent does not dispute that there have been prior disagreements between Carroll, Vogel, and Van Horn. Nonetheless Respondent argues that the evidence, when taken as a whole, does not support a conclusion that Vogel and Van Horn on that account attempted to cause Iber to discharge Carroll because of irrelevant or invidious considerations. Respondent thus argues that Vogel's initiating the meeting, and Vogel's and Van Horn's voting (as trustees) to accept Carroll's payments into the pension fund (despite a question of legality, because Vogel felt anybody that worked) should be credited with the hours worked, should be sufficient to dispel any inference of malicious motive, and serve to establish that, despite their not being the best of friends with Carroll, they nonetheless, in capacities of business representatives (or trustees) always treated Carroll fairly and did not seek to harm Carroll's economic interests.

Respondent would further have evaluated its other related contentions: that there was no evidence offered that Unes had ever requested a referral of Carroll; and that, indeed, prior to the start of the Pekin high rise project Carroll had himself already taken other employment out of state, a fact of which Unes was well aware and had encouraged. In arguing that Respondent has not prevented Carroll's employment by Unes, Respondent observes that Unes, in encouraging Carroll that he should take the out-of-state job gave no indication he did so for the reason he could not hire Carroll, but has related it solely as being because Unes still did not have the long-delayed contract to start the high rise project. Moreover, Respondent argues further that there was no evidence presented that Carroll had exhibited any continued interest in working for Iber thereafter, that Van Horn has testified without contradiction that Carroll had never thereafter called Respondent to make himself available for referral by the Union to Iber. Thus Respondent makes the additional argument that, by going to Colorado in late July and not informing Respondent that he was available for referral, Carroll has effectively abandoned any opportunity to be employed by Iber.

Analysis, Conclusions, and Findings

The central protagonists in this controversy are clearly Carroll and Vogel. It is essentially their conduct in June and July which has formed the subject matter of the instant complaint. Their credibility considerations, in general, are stark contrast to one another. As to Carroll, I have discerned instances in which Carroll's recollections of events appear rather clearly to have been overstated and/or been accusatory in relating the facts, e.g., as is observable in the comparison of Shaw's version of the witnessed Carroll-Vogel discourse being more corroborative in several respects of Vogel's early admissions, rather than Carroll's assertions as to the discourse. An effect thereof is to render Carroll's other testimony, particularly where in conflict with others, questionable, and particularly so on the few, but material, occasions where his testimony was elicited only after leading questions. Nonetheless, the weight of record evidence as to the disagreements between Carroll and Vogel is appreciable. In contrast, Vogel, called first by the General Counsel, as a section 611(c) witness, was discernibly candid, nonhesitant, and nonevasive in answering all questions put to him, whether or not the subject area was one that favored his position. It is abundantly clear that Vogel had not "minced" words earlier with Carroll, Unes, Shaw, and others, and the frankness of his hearing testimony has reflected those circumstances. In evaluating all the testimony, particularly as to Carroll and Vogel, it would appear appropriate to reflect at the outset the wise admonition of Judge Learned Hand in *Universal Camera*, 190 F.2d 429, 431 (1951), that "nothing is more difficult than to disentangle the motives of another's conduct—motives frequently unknown even to the actor himself."

The first clear evidence of a disagreement between Carroll and Vogel relates back to the July–August 1980 work jurisdictional disputes that occurred between millwrights and ironworkers. Carroll believed that Vogel was regularly proving to be ineffective as a business representative in failing to opt to take stronger action to preserve what Carroll viewed was millwright work regularly being lost. Vogel in turn, viewed Carroll as a headstrong union radical who would not readily accept the business representative's opinion when it differed from his own, nor accept that Vogel in any event had orderly procedures in such matters that he had to follow.

The right to criticize union leadership is clearly protected by Section 7 of the Act, *NLRB v. Electrical Workers (IUE)*, 454 F.2d 17, 21 fn. 6 (1972). It is significant however in that regard that neither Vogel nor Local 644 sought to take any immediate internal union action against Carroll because of Carroll having held to those differing opinions, nor because of Carroll's early forceful expressions of an attitude critical of Vogel's performance as business representative. Carroll's subsequent open and continued use of a nonunion contractor in Local 644's jurisdiction months later was quite another matter. That was a member action which the business representatives upon learning of it, under force of their own governing membership regulations, could not ignore.

It seems reasonable to infer from Carroll's initial statement to Vogel (undenied by Vogel) that there was a connection between Carroll's continued use of a nonunion contractor on his residence addition, and continued millwright work loss, that Vogel recognized Carroll's action as being essentially a designed embarassment to him personally, if not immediately, certainly after Carroll had made such remark while refusing to remove the problem upon the personal request of Vogel to do so. Carroll has acknowledged that his use of a nonunion contractor violated his obligation. I thus have no doubt and I find that Vogel would likely view that circumstance as a radical attack on his own institutional status; and I further find Vogel essentially reacted in turn by bringing the entire matter to a head, by not only preferring as required internal union charges on that act in derogation of membership obligation, but by preferring charges simultaneously that Carroll was engaged in conduct creating unwarranted dissension in the Union, and conduct constituting willful slander of the business representatives. Whether Carroll later advanced his admitted purpose in that respect to the District Council executive board, or trial committee, or thought better of it all, and offered in explanation only the altered claim that he wanted the Union to organize the nonunion contractor, the fact clearly is that following internal union constitutional procedures, at District Council level, Carroll was found guilty of the charges preferred.

Carroll was not expelled from membership, but he was fined. He also received a sentence from the delegates to the District Counsel in form and effect restrictive of his local union membership, and designed to silence him from participation in internal local union affairs for a period of 5 years. While there is no question of the likely continued existence of a strained relationship thereafter between Carroll and Vogel, the initial charges brought by Vogel (and Van Horn) against Carroll, in my view, were not simple instances of retaliation on Vogel's part to Carroll's prior criticism of Vogel so much as Vogel's upholding internal union regulation on membership obligation. The sentence, imposed in early 1981, was understood by Carroll to preclude his attendance and voting on issues at local meetings, but not to extend to his right to individually participate in general elections, to continue to be critical of incumbent officials and to support other candidates in opposition to them. However, when Carroll found work outside the state he left the area, for the interim, voluntarily transferring his membership out of Local 644.

In regard to Carroll's later effort in August-September 1981 to transfer his membership back into Local 644, in light of the uncontradicted testimony that a vote on motion to seat a transferring member had been the practice in Local 644 not only under Vogel, but under other presidents, for 25 years, I am not persuaded by the General Counsel's argument that it should be concluded that the revealed departure from constitutional procedures in this instance has independently evidenced the high degree of animosity that Vogel held towards Carroll. To the contrary, on this record, I am more convinced that Vogel was generally shown observant of superior authority, as he understood it. This is not to say that Vogel held no continuing animosity towards Carroll; though it is to be fairly observed that, with the vote of the membership taken, the membership's view was known to Vogel to be against a seating of Carroll. Nonetheless, on Vogel's part, when directed to change the local transfer procedure, he promptly did so.

While I have had reservations on the matter, stemming from the record's lack of clarity as to the timing of Vogel's actions taken in pursuit of a trustee meeting, and the eventual trustee acceptance of Belding's pension *and* health and welfare contributions as evidencing that Vogel acted professionally towards Carroll with good will, the weight of the record evidence, as presented, in the end predominates sufficiently to warrant findings now made that the action favored Carroll; that favorable trustee action was initiated and pressed by Vogel; that it was not an action required; and that the action in that regard more probably than not was begun, if not completed, in January.

There is no doubt strained relationships continued between Carroll and Vogel. However, I do conclude and find that it was Carroll's presenting of a certain hospital bill (for services provided in the interim while Carroll's attempted transfer had not been effected) to Vogel for payment by Local 644, with Carroll's (incorrect) assertion that Lucassen had directed it, that prompted Vogel's early February letter written to Lucassen.

Vogel made the local's position known to the International that he would not utilize local union funds for that purpose. However Vogel also took that occasion to apprise the International of Carroll's prior conduct as a member, and to request (and reasonably so under the circumstances) a clarification on the Local's prior longstanding procedure on voting to seat members. It is noteworthy that Vogel's presenting of the question was in terms of a vote taken on a brother that the Local had deemed "detrimental," and "completely against everything the Union stands for." However, even more revealing of Vogel's personal attitude and concern, Vogel related that he suspected Carroll of violating his outstanding sentence in "getting involved in our general elections," and that, if Vogel could prove it, he would charge Carroll again, and this time attempt to take Carroll's book through the District Council. Early and clear antagonism is evidenced to Carroll's active participation in the June general election. Contrary to Respondent, I

conclude and find that Lucassen in his February letter response, inter alia, warned Vogel that in that latter respect Carroll as a member had certain Federal rights that Vogel should review for his own protection. The record evidence would indicate that Vogel followed that counsel, at least through June election, when Carroll involved himself in voter eligibility issues at Local, District Council, and International levels.

With regard to the complaint allegations, at the outset I have found no evidence that would warrant a finding that Vogel told Carroll (and Shaw) that the Union would not permit Carroll to work in Local 644's area as is alleged in the complaint. I shall accordingly recommend the complaint allegation to that effect be dismissed. Similarly Carroll's assertion that it was in response to his own question if he were benched that Vogel had responded, "Why don't you go out of town and go to work," was not only not corroborated by Shaw, but Shaw's own recollection was such as to rather show the nature of the remark was essentially otherwise. It was when Carroll had broached the subject initially that he should not have to go out of town and find work that Vogel had rejoined that Carroll apparently did not have any trouble finding work out of town, which remark was essentially acknowledged initially by Vogel. Consequently, it is further concluded and found that there is insufficient and/or unpersuasive evidence presented to warrant a finding that Vogel had thereby coercively urged Carroll to leave Respondent's area to find work as has been alleged in complaint. Accordingly, it will be similarly recommended that this complaint allegation be dismissed.

With regard to the main complaint allegations that Respondent attempted in mid-June to cause or caused Iber not to employ Carroll, there are a number of related factual disputes. There is the underlying dispute over the meaning of the hiring hall provisions, nature of attendant practices, and the propriety of Vogel's and Van Horn's actions. There is also a dispute of fact whether Carroll was ever actually told he was hired, or even issues raised as to whether or not Carroll was promised to be hired. Finally there are independent issues raised as to whether or not Carroll, in any event, effectively abandoned opportunity to be hired, or be referred, by his earlier acceptance of employment out of state.

To begin with, in arguing that under the contract Iber could hire employees directly, the General Counsel has specifically stressed article VII, section 1 recitement that the Employer, "may hire from any source it desires without paying heed to membership in the UNION or referral or clearance therefrom"; its section 4 Procedure (d) provision that "Men so referred shall not be given preference of priority by the EMPLOYER over non-referred men", and procedure (e) provision "Nothing herein shall prohibit the Employer from hiring or recruiting from any source it desires." As evidencing the practice thereunder, the General Counsel would rely on Unes' confirming assertion that he technically did not have to hire any workers from Local 644 other than a steward; and also, Carroll's assertion that his own employment history was that he had long sought and obtained his own jobs, directly.

Respondent contracontends that the General Counsel has incorrectly argued that article VII, section 4 procedure gives the employer a right to hire employees "off the street," that that section cannot be thus read out of context, but that it must be read in conjunction with the rest of section 4. Respondent thus specifically contends that the use of the word "shall" in earlier subsections 4(a) and (c) rather make it mandatory that an employer notify the Union of all available openings and job requirements and that it also give the Union an opportunity to refer qualified applicants for those jobs. Respondent argues that these sections can only thus be read as prohibiting an Employer from hiring off the street until the Union has been given the 48 hours to make referrals, as Respondent argues Davis has testified in explaining his view and the instructions repeatedly given all business agents as to the operation of the existing hiring hall procedures. That is unquestionably what Vogel (and Van Horn) also stood on.

It is thus Respondent's contention that subsection 4(e) was meant to give the employer the right to hire from any source he desires only after the Union has been given the opportunity by the employer to make required referrals; though acknowledging *it was also meant to reinforce and clarify the employer's reserved right to accept or reject referrals from the union.*

Respondent would have the additional argument observed that if the General Counsel's interpretation (that would permit an Employer to hire whomever it wants to) be deemed correct, it renders section 3(a) of the hiring hall provisions itself superfluous, as there would be no need for an employer then to have specifically reserved the right to hire former employees. In passing, it is observed that there is at least a surface allure to the latter argument (on recognized principle of contract interpretation) as an election of choice in an interpretation of a contract in manner simultaneously ignoring or rendering meaningless other provisions of the contract and resulting in unlawful action, over an arguable interpretation that gives account to all provisions and results in lawful conduct, would not appear warranted. The Board has heretofore held that a union may hold employees to a compliance with established practices built on reasonable interpretations of the hiring hall contractual agreement. *Teamsters Local 525 (Nelson Construction Co.)*, 193 NLRB 724, 725 (1971).

Respondent specifically argues that a union does not commit an unfair labor practice when it tries to enforce a valid hiring hall provision. See, e.g., *Longshoremen Local 1277-1 (Hellenic Lines)*, 228 NLRB 1, 4 (1977); and *Carpenters Local 1849*, 161 NLRB 424 (1966). Notably both involved enforcement of exclusive contract referral systems. On the matter, see also *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 675-676 (1961). In that regard, the General Counsel has countered with able and pertinent argument that if Respondent's referral procedures here are to be deemed the Employer's required exclusive source of workers, as Vogel and Van Horn (so the General Counsel argues) have appeared to assert, Respondent would surely then be liable to countless numbers of its members for having operated an exclusive referral hall in

a "haphazard" manner, *Plumbers Local 513 (Master Plumbers)*, 264 NLRB 415, 416 fn. 3 (1982). (The latter case is also one notable in its addressing of Local Unions' actions where work in one local's severely depressed jurisdictional area was slow.) It is to be observed that Vogel, Van Horn, and Davis have all stopped short of any assertion that an employer had to accept any specific union referrals. Though Unes simultaneously has acknowledged that he had to refer to the Union for men, Unes has also consistently held to the position that he technically only had to hire the steward.

In summary, Davis and Vogel essentially emphasize the timely notice of work requirements and 48-hour referral opportunities; and Unes, while acknowledging existence thereof, rather emphasizes the Employer's reserved hiring provisions. Insofar as advanced before me, it would appear the parties to the contract have made an effort to prescribe for themselves in writing, essentially, a hybrid referral system, one that provides certain desired features of an exclusive hiring hall operation, at least to the extent of providing the Union certain contractual rights to timely notice of an employer's work requirements and timely opportunity to refer while providing a local (and traveling) employer with a ready source of local skilled workers on request, but which at the same time by force and/or limitation of contractual terms would appear, seemingly as agreed by the parties, not to go so far as to have bound employers to a local union's hiring hall necessarily, or actually serving, as their exclusive source of referral, e.g., to require hiring of the crew from a local hall, though it does place on employer the pledge of an utmost harmony and good faith in that regard (use). Whether the practice thereunder was such as to affect an exclusive hiring hall, or not, is but another factual question.

Addressing the practice thereunder, first the sole evidence presented of direct employer hire is that of Carroll's assertions that there were two ways an employee could obtain employment, viz., either through the hall or by direct contact of an Employer; and a claim urged by the General Counsel that the same is established by Carroll's lengthy history of obtaining work from employers directly. There was no other evidentiary support of that position offered, and notably not by Shaw, who for himself has always sought union referral by daily presence at the hall. It is immediately observed that, of the three projects at which Carroll had obtained employment in Local 644's jurisdiction during Vogel's entire tenure, the first at Baldwin was for 3 or 4 years, and that project had begun before Vogel was in office as business representative *and* was employment Vogel (reasonably) believed had been the result of a referral by his predecessor; the second to Atlantic was obtained by Carroll as a result of direct Vogel referral; and the last before the questioned Iber contact, to Heinz, involved employment by an (uncontested) personal friend of Carroll. That is hardly clear and convincing evidence that an existing practice was that all members were free at all times to arrange their own employment with covered employers, without regard to the contractual advantages the hiring hall provided.

Shaw in contrast always reported to the hall for referral. However, neither is the test of an exclusive hiring hall whether an employee has always used the hall to obtain referral to a job, but rather, whether the Employer was bound by contract or *by practice* to use the hall as the exclusive source for its employment of employees. Cf. *Laborers Local 889*, 251 NLRB 1581 supra. Though on scope and degree of union acquiescence in contractors direct hire see *Plasterers Local 121 (Associated Building)*, 264 NLRB 192 (1982). (Not involved in this case is any question of the departure by one employer-member of an employer association so bound.)

Though acknowledging in prior years Iber had regularly used Local 644's hall to fill its requirements, Unes has consistently maintained that Iber was not so bound by contract; and it is fairly clear from the early September 1981 meeting of Unes and Van Horn, the contact of Unes by Vogel and Van Horn in June 1982, and their subsequent prejob conferences that these parties proceeded essentially from reliance and points of emphasis on different provisions of their agreed hiring hall system, namely employer's right to hire versus union opportunity to refer. I need not determine herein which, or to what degree both, are right or wrong under their contract. Nor need I rely on any Davis' claim of an arbitration support (particularly where such was not produced). It is my view that the Union's claim that the Employer's obligation to provide notice, and union opportunity to refer, and which thus precludes premature employer hiring off the street is at least a reasonable and arguable position taken under the apparent terms of this contract. Cf. *Teamsters Local 525 (Nelson Construction)*, 193 NLRB 724 (1971); see *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

Moreover, from those same party contacts described, it seems clear to me that the parties essentially have sought to arrive at acceptable understandings within that hiring hall relationship, e.g., on the number of Iber regular employees that would be brought to the project in Local 644's jurisdiction, thus affecting the number of jobs to be eventually available to Local 644's hall for referral. True, an agreed percentage was never firmed up. However, from review of the steward reports in evidence, it would appear further revealed that in practice Iber's regulars were not all brought to the job when the job started, but periodically over several weeks; and albeit the mix of Local 644 and Local 183 members was kept generally within the parameters of their mutually discussed percentages, the developing meld of employments presumably related more directly to mutually acceptable treatment of the development of the job requirements.

In short, in my view, "harmony and good faith" was evidenced as being brought to play to bridge the difference in the provisions the parties respectively stood on; just as, in my view, Iber's assurance to the Union at a later prejob conference that it would remove its out of town regulars when opportunities arose for their employment in their own jurisdiction may fairly also be observed to have evidenced interplay of that same, mutually obligated pledge of utmost "harmony and good faith"

in their use of the hiring hall operation. I cannot say such considerations do not evidence, on the Union's part, union action and sufficient rationale of representation of constituency as to overcome adverse inferences, or presumptions that its actions have unlawfully encouraged union membership. *Operating Engineers Local 18 (Ohio Contractors)*, 204 NLRB 681 (1973), revd. on other grounds 496 F.2d 1308 (6th Cir. 1974).

The Board has permitted contractual parties to specially and widely arrange hiring hall systems to meet their varying recruitment needs, e.g., to arrange an exclusive hiring hall system that has allowed members, upon registering as being out of work, to go out and obtain their own work with covered employers, but to preserve the hiring hall as an exclusive system by requiring that each successful individual be nonetheless referred out by the hall by requiring that an employer then request referral of that particular individual by name, cf. *Painters Local 487 (American Coatings)*, 226 NLRB 299 (1976); or to provide for a hiring hall's wholly optional use (thus nonexclusive) but with a system which otherwise provided, inter alia, special referral arrangements for permanent employees, or employees who regularly work for a particular employer, cf. *Laborers Local 889 (Anthony Ferranti & Sons,)*, 251 NLRB 1579, 1580 (1980).

Although the instant contract's hiring hall provisions encompass certain provisions frequently found to be present in an exclusive referral system, namely, its provisions that advance notice be given by the Employer to the Union on all of Employer's job requirements, and for a period of time to be then afforded by the Employer to the Union for the Union to make referrals of qualified individuals using its hall for employment in those jobs, the contract also contains permissive and nonexclusive *hiring* provisions as are clearly evidenced in section 1, with a controlling reaffirmance in section 4(e), especially with the specific confirmation in sec. 4(d) that the Employer is not obligated to extend any preference in employment to any individual referred by the Union to fill a job over an individual not so referred.

In agreement with the General Counsel I conclude and find the contract itself clearly describes a nonexclusive hiring hall system, and that the practice was consistent therewith. However, I do not go so far as certain of the General Counsel's arguments would then appear to otherwise lead, namely, that the Employer's obligations, here contractually indicated as undertaken, to provide the Union with notice and an opportunity to make referrals to available jobs, are themselves, thereby rendered meaningless, or unenforceable, because of the nonexclusive nature of the referral system's hiring provisions.

It is clear that a union may seek to enforce the integrity of an exclusive hiring hall. Cf. *Birmingham Country Club*, 199 NLRB 854 (1972). It seems to me that a union may seek as well to act to preserve lawful advantages it has obtained by contract in filling employment opportunities, although that advantage be less than service as an exclusive source of referral, e.g., act to preserve the instant notice and opportunity to timely refer, so long as it does not exceed that objective. It is not for me to pass on the wisdom of a union-stated objective, where it is discernibly of contract and related to the lawful concerns of unit employees, cf. *Musicians Local 10 (Shield Radio Products)*, 153 NLRB 68, 84 (1965); and, in that respect, it can hardly be questioned that a preservation of a worker's opportunity to be at least considered in the filing of available jobs with a contracted employer is of legitimate concern to the instant unit employees; particularly, where at least half are unemployed, and their force composed of many who have run out of the supporting stay of unemployment compensation benefit. Iber's prior use of the hall, and particularly its intended use for its Pekin high rise project from as early as September 1981, would appear to support the same result. See, *Sheet Metal Workers Local 96 (Cotton, Inc.)*, 222 NLRB 756, 758 (1976); and see also *Boilermakers Local 40 (Envirotech Corp.)*, 266 NLRB 432 (1983), for discussion of other instances of reasonable acts permitted a union to promote efficiency and integrity of a hiring hall in the representation of its constituency.

In a lawful, nonexclusive hiring hall system and practice, such as we have here, the Union has a duty to act in an evenhanded manner toward all its members, *Plasterers Local 121*, supra, 264 NLRB at 194 and not on considerations or classifications which are irrelevant, invidious, or unfair, *Laborers Local 300 (Memorial Park Development)*, 235 NLRB 334, 352 (and see cases cited there) (1978), enfd. 613 F.2d 203 (9th Cir. 1980). In the operation of a hiring hall a union also may not treat a certain member disparately, because the member has engaged in activities which are protected by the Act, *Crouse Nuclear Energy Services*, 240 NLRB 390 fn. 2 (1979); and specifically protected is a member's criticism of union administration, political opposition to a union official, or dissident activities in general, cf. *H. H. Robertson Co.*, 263 NLRB 1344, 1356 fn. 12 (1982), and see cases cited therein.

Carroll's acceptance of employment out of State in late July, at a time when Iber's contract to start the Pekin high rise had not as yet been signed, does not eliminate the need to address and resolve the allegations that Respondent had earlier caused or attempted to cause Iber not to hire Carroll in violation of Section 8(b)(1)(A) and (2), though it might arguably affect a remedy for any violation to be found therein.

The first factual issue raised and argued by the parties is as to whether Unes ever actually hired Carroll. To support conclusion Unes hired Carroll, the General Counsel relies on Carroll's assertions to that effect, and would overcome any technical hearsay objection thereon by "corroborative circumstances" authority of *American Chain Link Fence Co.*, 255 NLRB 692, 693 fn. 4 (1981), enfd. as modified 670 F.2d 1236 (1st Cir. 1982), or, apparently, its use to corroborate "other evidence" that conduct is unlawful, *RJR Communications*, 248 NLRB 920, 921 (1980). I have essentially no quarrel with either proposition cited, but with the warrant to find them applicable and controlling in this case.

Unes has categorically denied he hired Carroll, with supportive assertion how could he, as he had no contract. The indisputable fact is Iber had no contract, and did not have a signed contract for 2 or 3 additional months. Carroll's assertion that in doing so Unes had

told Carroll to tell Superintendent Williams that he was hired, is itself not credited, as I am convinced that, if Carroll had been actually directed to talk to Williams, he would have found Williams and done so immediately. I have similar difficulty in any ready acceptance of Carroll's further assertion that he had thereafter told Unes that he probably had two business agents who would be upset about Unes hiring him. First there is the unlikelihood of an applicant of still-anticipatory work raising an issue of prospective union turmoil for an employer if it hired him; and as well, there is an inherent inconsistency of Carroll's immediate report on the subject of Iber's hire to Van Horn. I find Van Horn's testimony of Carroll's telling him that Van Horn would be receiving a call from Unes as they were going to hire him, was far more plausible, and more likely accurate, especially in the light of the mutually consistent testimony of Vogel and Van Horn that Unes shortly thereafter directly denied he had hired Carroll.

On the other hand, I have no doubt that Carroll at the time reasonably had believed he was going to be hired as a result of his having had the several contacts with Unes; their prior specific discussions of his work experiences; Unes' interest in whom Carroll's letters of recommendation were from; and Unes' admitted direction of Carroll to try calling back. In the latter regard, although I credit Unes that he had never actually told Carroll he would or would not hire him, I do not accept the additional assertion of Unes that there was no reason that he had not told Carroll not to continue to contact him. Rather, I find the more plausible import of that encouraged circumstance is that Unes had recognized in Carroll's described work experience, identification of, and willingness to demonstrate prior employer approval, a prospect of a valuable employee for Iber hire. Unes admitted direction to Carroll to "try calling," is reasonably to be inferred as being with design to keep Carroll's prospective applicancy for employment with Iber viable. In short Carroll would quite reasonably believe that Unes had as much as said he was going to be hired, or promised he was going to be hired; which brings us squarely to the issue of the conduct and motivation of Vogel in contacting Unes when it was reported to him by Van Horn that Carroll was claiming Iber had hired him for the Pekin high rise, a project long delayed and not prejobbed. Before evaluating those material considerations, it is observed that Vogel, who did not mince words, viewed the report from Van Horn and broached the subject to Unes in terms of a question whether Unes had hired Carroll.

With regard to Carroll's assertion that Unes later had reported to him that the business agents had told Unes essentially that Carroll would cause trouble on the job, that statement was not corroborated by Unes as either said to Carroll, or as said to Unes by either business agent. Vogel testified generally that Carroll's prior work experiences were not discussed with Unes. Wholly apart from the observed testimonial deficiency in which Carroll's assertion initially arose, on leading question, it is to be observed that the statement, insofar as it would be argued as attributable to Respondent, would involve double hearsay inference. I reject it as competent evidence of Vogel's stated motivation, and I, in any event, credit Vogel's general testimony to the contrary. I find that Vogel did not discuss Carroll's prior work experiences, good or bad, with Unes. Moreover because of the inherent plausibilities of record for Vogel having made the remark at the time, and despite Vogel's acknowledgment of Unes' earlier protestation that he had not hired Carroll, I credit Vogel's specific testimony that what he told Unes exactly was that Unes *should not be hiring them off the street and bypassing the Union*, and *if you start hiring them off the street, your phone will be ringing off the wall, and you won't be able to sleep at night.*"

The General Counsel correctly would have it observed that a finding of "cause or attempt to cause" under Section 8(b)(2) of the Act does not require a direct or expressed threat of retaliation, as it has long been observed: "It is enough that the union's conduct reveals an intent to arouse the employer's fear that the hire or reemployment of an applicant will result in economic pressure against him." *Bricklayers Local 18 (Ferguson Tile Co.)*, 151 NLRB 160, 163 (1965).

The instant case consideration is made a close one not because of the obvious relation of the latter remark in part to Unes prior contact with Carroll, but the case of unlawful Respondent conduct affecting Carroll's employment opportunity is one made close by other findings herein made: that in February Vogel was expressly displeased with Carroll's suspected intention to become involved with the general election (then believed to be in contravention of sentence); that Vogel was aware of Carroll's more recent support of Shaw, who was running in opposition to Vogel; that Carroll had very recently (early June) had a confrontation with Vogel over the matter of voter eligibility in which Carroll had revealed to Vogel that he had again contacted the International (Lucassen) over a matter Vogel then regarded as a matter that should have been handled by the Local's treasurer; that Vogel had contacted Davis to ensure he knew about Carroll's contact of the International; and finally by virtue of the nature of my findings hereinafter made in relation to other related complaint allegation.

Although the issue is not one free from doubt, I conclude and find that the General Counsel's evidence has failed to predominate and to persuade me that Vogel's approach of Unes, at this time, was motivated to prevent Iber's hire of Carroll rather than to prevent any proclivity Unes might then be developing to start hiring men off the street, bypassing the hall, without affording the Union the contractually provided advance notice when the jobs actually became available, and a realistic opportunity at that time to make referrals to them. There is supporting and credible evidence to the effect, and no credible evidence to the contrary, that Unes did not request that Carroll be referred; that neither Vogel nor Van Horn told Unes they would not refer Carroll. Although Vogel's assertion that he would have referred Carroll if Unes had requested it may be regarded as of little evidentiary weight because of its self-serving nature, the fact is that all others requested by name, including a personal friend, were referred and that Unes did not request Carroll's referral. In that respect, although Carroll was never subsequently referred, the fact

also is that by the time Unes had occasion to man the job months later Carroll had much earlier taken a job elsewhere; and Carroll had not indicated to either Unes or Respondent a continuing interest in a later referral to the Pekin high rise project when it started. Moreover, at the time of this incident, Carroll had not run out of unemployment; and it only seems reasonable to conclude that members generally, and Carroll in particular, would have by that time been fully aware of the Local's engrafted practice to refer the latter category of employee out first. Finally, that very category, if not serviceable as an objective criteria for referral, at least describes a classification whose use and application would not reflect a disparate treatment of Carroll as an individual because of his failure to qualify.

For all of the above reasons, but principally and in the main because of the nature of Vogel's actual statements made to Unes relating directly to the Union's contractual hiring hall claims and union member employment needs, I am persuaded that *was* Vogel's motivation in approaching Unes at this time albeit involving inquiry on Iber's hiring Carroll off the street which Carroll had both occasioned and brought to light. In short, in my view, Vogel's obligation as business representative to protect and preserve contractual work opportunities for other unit employees who were out of work under the above-described conditions was not hostage to the circumstance of any disagreeable relationship he had with Carroll; and indeed, if he had not acted, or if Iber had continued as with Carroll, other unit employees would have necessarily suffered disadvantage, curable by notice to them of that circumstance, and likely personal action (direct job seeking) by them. It appears to me the result is the same whether it is to be concluded that the General Counsel's evidence simply did not make out unlawful coercion or if it be construed that a prima facie case was initially shown (based on Vogel's evidenced prior and continued displeasure with Carroll over union matters and Vogel's contact of Unes at a time when Carroll enjoyed prospect of employment), that the same was successfully met by evidence that Vogel could have responsibly acted as representative of all unit employees in essentially no other way than by contacting Unes directly about the Employer's suspected premature hiring off the street in derogation of the contract's advantages to the Union's constituency, *Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). Accordingly, it will be recommended that the complaint allegation that Respondent in mid-June caused or attempted to cause Iber to refuse to employ Carroll in violation of Section 8(b)(1)(A) and (2) be dismissed.

The complaint lastly alleges and the General Counsel contends that about July 15 Respondent brought internal union charges against Carroll because Carroll had filed the instant charges. Respondent defends that Vogel's internal union charges were shown previously planned, and thus has argued they were not filed in retaliation; and even if determined to have been retaliatory, further argues they do not constitute an unfair labor practice, essentially because the charges were dismissed by the District Council's executive board, with Respondent stating reliance on Board approved holding in *Transport Workers Local 100 (Liberty Coaches)*, 230 NLRB 536, 539 (1977). There a union's appeal committee had ruled, in a case that presented no question of expulsion or threat to do so, that, "A member's right to complain to the National Labor Relations Board is protected by law regardless of the merits of the complaint and thus charge by Brother McGarvey is dismissed. " The Administrative Law Judge held there was not a violation of the Act, and the Board approved.

The Board has stated that "[A] fundamental policy of the Act includes unrestricted access to its processes and no private organization should be permitted to prevent or regulate access to the Board." *Shoe Workers (Independent) (United States Shoe Corp.)*, 208 NLRB 411, 417 (1974). *NLRB v. Marine Workers*, 391 U.S. 418, 425 (1968), the Supreme Court had earlier agreed with the Board that the overriding public interest makes unimpeded access to the Board the only healthy alternative, except and unless plainly internal affairs of the Union are involved; and, at 425 specifically held, "the proviso in § 8(b)(1)(A) that unions may design their own rules respecting 'the acquisition or retention of membership' is not so broad as to give the union power to penalize a member who invokes the protection of the Act for a matter that is in the public domain and beyond the internal affairs of the Union."

In *Scofield v. NLRB*, 394 U.S. 423, 429 fn. 6 (1969), the Supreme Court later observed:

> As part of the bill of rights of union members, the Landrum-Griffin Act guaranteed freedom of speech and assembly "*Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." Pub. L. 86–257, Tit I, § 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411(a)(2).

The Court also noted 394 U.S. at 430, applying further the view of *NLRB v. Marine Workers*, supra:

> Under this dual approach, § 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

Thereafter the Board has declared its understanding of the Supreme Court's charge to it in *Scofield*, supra, as being: "the duty of determining the overall legitimacy of union interests," and that it "take into account all Federal policies," inclusive of the rights of a union member guaranteed by the Labor-Management Reporting and Disclosure Act, "to participate fully and freely in the internal affairs of his own union." Cf. *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1, 2 fn. 5 (1972). As earlier noted, in other context, the Board has approved finding that a member's criticism of union administration, political opposition to a union official, or dissident activi-

ties in general are each and all specifically protected by the Act, cf. *H. H. Robertson Co.*, 263 NLRB 1344, 1356 fn. 12, supra.

The initial *charges* preferred by Van Horn and Vogel in October 1980 would appear as charges reasonably shown related to circumstances permissibly encompassed within the *Scofield*, supra institutional and contractual concern cases. However, the sentence later imposed debarred Carroll "from participating in any local union activities, rights or privileges of a member, except for paying dues for a period of five (5) years."

The facts of Vogel's February and preelection displeasures with Carroll, earlier marshalled, need not be repeated beyond recalling that on February 3 Vogel had explicitly propounded to Lucassen an intent to file charges before the District Council and to seek to take Carroll's book permanently, if Vogel was able to prove what he then suspected, namely that Carroll was becoming involved in the June general election. There is no question that Vogel had then viewed such conduct on the part of Carroll as being in violation of Carroll's sentence. On February 22, Lucassen, in clear effect, directed Pruitt to speak to Carroll to ensure Carroll was complying with the rules of his membership. However, Lucassen also, in effect, specifically instructed Vogel that there were certain membership rights under Federal law that Carroll enjoyed that Vogel should review for his own protection. Carroll thereafter described his restriction as applying to local union attendance and voting on issues at meetings, but otherwise broadly asserted his civil rights allowed him to speak out about anything. I cannot accept that Vogel was left, or remained, in the dark as to what Carroll's Federal rights (generally delineated above) were. In that connection I note that Vogel, prior to the election, neither placed nor expressed any restriction on Carroll's various election activities in support of Shaw, of which, in general, I have no doubt he was aware.

Vogel was aware of Carroll's involvement in eligibility matters at both Local and International level. From Vogel's contact of Davis concerning the latter, it is more likely than not that he was also aware of Carroll's contact with the District Council on that subject matter. In any event, Vogel did not seek to restrict Carroll from his activities during Vogel-Carroll discourses. Vogel did not ask Carroll to let the treasurer handle it. Though I have no doubt that Carroll's propensity to call the International played on his mind, as is evidenced by his later "hot line" comment to Carroll in Shaw's presence. Nonetheless, the fact is no charges were brought by Vogel before Carroll filed the instant unfair labor practice charges. By that time Vogel had already been successful in being reelected. Vogel's internal union charges then followed only 2 days after the Local was served a copy of Carroll's charges. Many constitutional items then charged by Vogel were stale under the constitution. I conclude and find that the General Counsel has made out a very strong prima facie case that the internal union charges were filed by Vogel at this time because of Carroll having recently filed his unfair labor practices, in short, *were* in nature retaliatory.

Respondent did not recall Vogel to testify on this particular (or any) matter. Respondent's defense is simply based on Davis testimony that Vogel had communicated with him after the election about having proof that Carroll had violated his sentence and expressed an intent to file charges. Davis also testified as to having alerted Vogel to certain ministerial meeting and notice considerations, with advice to Vogel that he had plenty of time to file them. The defense offering, in my view, even if credited is wholly inadequate.

Not only is the timing relationship of Vogel's internal union charges to Carroll's filing of unfair labor practices itself self-obvious, much of Vogel's complaint was on constitutional matters, e.g., of causing dissension by being critical of Vogel's handling of certain (other) pension matters, and of Carroll not being obedient to authority and charitable in judgment. All were subsequently determined stale under the constitutional requirements. I cannot accept that Vogel would not have known that. Even as to other (dropped) matters bearing on Carroll's sentence, such matters had certainly been known for some time before the charges were filed on them. Moreover Vogel has revealed much as to presence of other motivation when he answered at hearing that Carroll has *never* been obedient to authority; and that Carroll had argued with Vogel about *every* job.

That Vogel was frustrated over Carroll's construction of Vogel's actions to enforce the hiring hall provisions to the advantage of unit employees generally, by Carroll's filing of an unfair labor practice accusing Vogel of personally having prevented Iber from hiring Carroll individually "because of arbitrary reasons" (e.g., Carroll's conduct in opposition to Vogel and his involvement with voting eligibility) would appear likely. That Vogel filed the internal union charges at this time in retaliation for Carroll having filed the unfair labor practice–of that I have no doubt. It is accordingly concluded and found that in violation of Section 8(b)(1)(A) Respondent filed internal union charges in regard to union political activity and/or otherwise against Carroll, because Carroll had earlier filed unfair labor practices with the Board.

Unlike the case situation in *Transport Workers Local 100*, supra, on which Respondent would rely, there was here no such definitive adjudication of membership right in disposition of internal union charges. I find violation of 8(b)(1)(A) coercion and restraint has occurred, and remedy therefor is required. The General Counsel's remaining request is that finding be made that Vogel's remark to Shaw that if Vogel put Shaw to work, Vogel would catch all kinds of hell, was fully litigated, a coercive remark, and itself violative of Section 8(b)(1)(A). I find the incident was a matter fully litigated. However, in my view of the entire circumstances the remark was at best left ambiguous. Vogel was a generally credible witness. He testified that he specifically told Shaw he had never benched a man. Although Vogel's other remark may have startled Shaw, Shaw had raised the question because he had been anticipating a request for his services by name. However, other circumstances had occasioned his not being called at the time. Moreover he neither alerted Vogel to that consideration, not pursued

inquiry as to what Vogel meant. The fact is the remark is equally applicable of meaning that if Vogel preferentially referred his election opponent Shaw out over others, presumably inclusive of some of those who had supported him, his action would not be left unquestioned. With the affirmative statement made to Shaw in the same conversation that he had never benched a man in the Union, in my view, more was required for it to be objectively viewed as coercive. I decline to make the urged finding.

CONCLUSIONS OF LAW

1. Respondent Local 644, United Brotherhood of Carpenters and Joiners of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
2. Tousley-Iber Co. is an employer and a person engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By the action of Respondent's President and Business Representative Darrell Vogel, preferring internal union charges on July 15, 1982, against its member Edward Carroll in regard to political activity and/or otherwise, because Carroll had earlier filed an unfair labor practice charge against Respondent on July 12, 1982, Respondent has restrained and coerced members-employees in violation of Section 8(b)(1)(A) of the Act.
4. Respondent has not violated the Act in any other manner as alleged in the complaint; or, as has been raised by the General Counsel herein as a matter fully litigated and in violation of Section 8(b)(1)(A), viz., by the certain remark of President and Business Representative Vogel made to member Don Shaw, in June 1982.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. I shall among other things order that Respondent completely expunge from its records all references and other evidence pertaining to the July 15, 1982, internal union charges placed against Edward Carroll.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

Local 644, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Pekin, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing any member-employee in violation of Section 8(b)(1)(A) of the Act by filing internal union charges against a member in regard to intraunion political activity and/or otherwise, in whole or in part because that member has filed unfair labor practices against Respondent with the National Labor Relations Board.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Completely expunge from its records all references and other evidence pertaining to the July 15, 1982 internal union charges filed against Edward Carroll, and notify Ed Carroll of such action in writing.

(b) Post at its Pekin, Illinois business office, and at all of its meeting halls wherever located, copies of the attached notice marked "Appendix."[4] Copies of said notice on forms provided by the Regional Director for Region 33, after being duly signed and dated by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply herewith.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT retaliate against or restrain or coerce any member-employee by placing internal union charges against a member in regard to his lawful intraunion political activity and/or otherwise, in whole or in part because that member has filed unfair labor practices against this Union with the National Labor Relations Board.

WE WILL NOT in any like or related manner restrain or coerce any member-employee in violation of their Section 7 rights under the Act.

WE WILL completely expunge from our records all references and other evidence pertaining to the July 15, 1982, internal union charges placed against Edward Carroll; and WE WILL notify Edward Carroll of such action in writing.

LOCAL 644, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO